

EXHIBIT 1
SEALED

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

--oOo--

WAYMO LLC,

Plaintiff,

Case

vs.

No. 3:17-cv-00939-WHA

UBER TECHNOLOGIES, INC.;

OTTOMOTTO LLC; OTTO TRUCKING LLC,

Defendants.

_____/

HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

VIDEOTAPED DEPOSITION OF JOHN WILLIAM GURLEY
THURSDAY, AUGUST 24, 2017

Reported by:

Anrae Wimberley

CSR No. 7778

Job No. 2687934

PAGES 1 - 182

Page 1

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

--oOo--

WAYMO LLC,

Plaintiff,

Case

vs.

No. 3:17-cv-00939-WHA

UBER TECHNOLOGIES, INC.;

OTTOMOTTO LLC; OTTO TRUCKING LLC,

Defendants.

_____/

HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

Transcript of video-recorded deposition of
JOHN WILLIAM GURLEY taken at Morrison & Foerster LLP,
425 Market Street, 33rd Floor, San Francisco,
California, beginning at 8:37 a.m. and ending at 1:09
p.m. on Thursday, August 24, 2017, before Anrae
Wimberley, Certified Shorthand Reporter No. 7778.

1 APPEARANCES:

2 For Plaintiff Waymo LLC:

3 QUINN EMANUEL URQUHART & SULLIVAN LLP

4 BY: CHARLES K. VERHOEVEN, ESQ.

5 JAMES JUDAH, ESQ.

6 50 California Street, 22nd Floor

7 San Francisco, CA 94111

8 (415) 875-6600

9 charlesverhoeven@quinnemanuel.com

10 jamesjudah@quinnemanuel.com

11
12 For Defendants Uber Technologies, Inc.; Ottomotto LLC:

13 BOIES SCHILLER FLEXNER LLP

14 BY: MICHAEL A. BRILLE, ESQ.

15 EDWARD H. TAKASHIMA, ESQ.

16 1401 New York Avenue NW

17 Washington, DC 20005

18 (202) 237-9608

19 mbrille@bsfllp.com

20 -and-

21 MORRISON & FOERSTER LLP

22 BY: MICHAEL A. JACOBS, ESQ.

23 425 Market Street, 33rd Floor

24 San Francisco, California 94105-2482

25 (415) 268-7455 mjacobs@mofo.com

1 APPEARANCES:

2 For Defendant Otto Trucking LLC:

3 GOODWIN PROCTER LLP

4 BY: TODD A. BOOCK, ESQ.

5 601 South Figueroa Street, 41st Floor

6 Los Angeles, California 90017

7 (213) 426-2560

8 tboock@goodwinlaw.com

9
10 For the Deponent:

11 PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP

12 BY: MARTIN FLUMENBAUM, ESQ.

13 CHRISTINA A. BUNTING, ESQ.

14 1285 Avenue of the Americas

15 New York, New York 10019-6064

16 (212) 373-3191

17 mflumenbaum@paulweiss.com

18
19 Also Present:

20 VERITEXT LEGAL SOLUTIONS

21 WARREN NGUYEN, VIDEOGRAPHER

22 (415) 274-9977

23 SFDepo@veritext.com

24
25 AARON BERGSTROM, Seniro Counsel for Uber

I N D E X

EXAMINATION BY:	PAGE
MR. VERHOEVEN	10

--oOo--

E X H I B I T S

EXHIBIT	DESCRIPTION	PAGE
Exhibit 910	Presentation documents entitled, "Project Zing Review"; Bates Nos. UBER00109871 through 877	33
Exhibit 911	Minutes of Special Meeting, Board of Directors, 4/11/16; Bates Nos. UBER00101482 through 498	73
Exhibit 912	Minutes of Meeting, Board of Directors, 4/10/17; Bates Nos. UBER00101479 through 481	98
Exhibit 913	Minutes of Meeting, Board of Directors, 5/15/17; Bates Nos. UBER00101499 through 500	108

1	E X H I B I T S (Cont'd)		
2	EXHIBIT	DESCRIPTION	PAGE
3	Exhibit 914	Minutes of Meeting, Board of	117
4		Directors, 5/22/17; Bates Nos.	
5		UBER00101501 through 504	
6			
7	Exhibit 915	Minutes of Meeting, Board of	132
8		Directors, 5/25/17; Bates Nos.	
9		UBER00101505 through 506	
10			
11	Exhibit 916	Letter dated 6/20/17 to Kalanick;	139
12		Bates Nos. BENCHMARK-WAYMO_	
13		00000168 through 169	
14			
15	Exhibit 917	Compilation of documents in re	153
16		public filing in Delaware; Bates	
17		Nos. BENCHMARK-WAYMO_00000039	
18		through 105	
19			
20	Exhibit 918	Verified Complaint; 38 pages	157
21		--oOo--	

HIGHLY CONFIDENTIAL - ATTORNEYS EYES ONLY

	QUESTIONS	WITNESS	INSTRUCTED	NOT	TO	ANSWER :
			PAGE	LINE		
1						
2						
3			4 7	5		
4			4 8	2 2		
5			4 9	6		
6			4 9	1 2		
7			4 9	1 7		
8			5 1	8		
9			6 3	2		
10			8 7	2 0		
11			8 8	7		
12			8 9	3		
13			9 0	5		
14			9 0	2 2		
15			9 2	3		
16			1 0 7	1 5		
17			1 2 5	2 3		
18			1 2 6	1 2		
19			1 2 7	1 2		
20			1 2 7	1 6		
21			1 2 7	2 2		
22			1 2 8	2		
23						
24						
25						

Page 7

1 THURSDAY, AUGUST 24, 2017; SAN FRANCISCO, CALIFORNIA;

2 8:37 A.M.

3 - - -

4 THE VIDEOGRAPHER: We're on the record at 8:37 on 08:37:51
5 August 24th, 2017. 08:37:53

6 Please note that microphones are sensitive 08:37:56
7 and may pick up whispering, private conversation and 08:37:59
8 cellular interference. Please turn off all cell 08:38:03
9 phones or place them away from the microphones, as 08:38:06
10 they can interfere with the deposition audio. 08:38:10

11 Audio and video recording will be taking 08:38:12
12 place unless all parties agree to go off the record. 08:38:16

13 This is Media Unit 1 of the video-recorded 08:38:18
14 deposition of William Gurley, taken by the counsel of 08:38:22
15 the plaintiff in the matter Waymo LLC versus Uber 08:38:27
16 Technologies, Inc., et al., filed in the United States 08:38:30
17 District Court, Northern District of California, 08:38:33
18 San Francisco Division, Case No. 17-cv-00939. 08:38:41

19 My name is Warren Nguyen from the firm of 08:38:46
20 Veritext Legal Solutions, and I'm the videographer. 08:38:49

21 The court reporter is Anrae Wimberley with 08:38:52
22 Veritext Legal Solutions. 08:38:53

23 I'm not related to any party in this action, 08:38:57
24 nor am I financially interested in the outcome in any 08:39:00
25 way. 08:39:00

Page 8

HIGHLY CONFIDENTIAL - ATTORNEYS EYES ONLY

1	If there are any objections to the	08:39:02
2	proceeding, please state them at the time of your	08:39:04
3	appearance, beginning with the noticing attorney.	08:39:07
4	Will counsel please state your appearances.	08:39:10
5	MR. VERHOEVEN: Charles Verhoeven, Quinn Emanuel,	
6	on behalf of Waymo.	08:39:13
7	MR. JUDAH: James Judah, Quinn Emanuel, on behalf	08:39:14
8	of Waymo.	08:39:17
9	MR. FLUMENBAUM: Martin Flumenbaum, Paul Weiss	08:39:17
10	Rifkind Wharton & Garrison, on behalf of Mr. Gurley.	08:39:22
11	MS. BUNTING: Kristina Bunting, Paul Weiss Rifkind	08:39:22
12	Wharton & Garrison, on behalf of Mr. Gurley.	08:39:28
13	MR. BRILLE: Mike Brille, Boies Schiller &	08:39:29
14	Flexner, on behalf of Uber.	08:39:31
15	MR. TAKASHIMA: Ed Taskahima, Boies Schiller &	08:39:31
16	Flexner, for Uber and Ottomotto.	08:39:34
17	MR. BERGSTROM: Aaron Bergstrom, in-house counsel	08:39:35
18	for Uber.	
19	MR. JACOBS: Michael Jacobs, Morrison & Foerster,	08:39:37
20	for Uber and Ottomotto.	08:39:39
21	MR. BOOCK: Todd Boock from Goodwin & Procter on	08:39:42
22	behalf of Otto Trucking LLC.	08:39:43
23	THE VIDEOGRAPHER: Will the court reporter please	08:39:47
24	swear in the witness.	08:39:48
25	//	08:39:48

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

JOHN WILLIAM GURLEY,

sworn as a witness by the Certified
Shorthand Reporter, testified as follows:

EXAMINATION

BY MR. VERHOEVEN: 08:39:48

Q. Good morning, Mr. Gurley. 08:40:02
A. Good morning. 08:40:03
Q. Could you just state your full name for the 08:40:05
record. 08:40:06
A. John William Gurley. 08:40:08
Q. By whom are you currently employed? 08:40:11
A. Benchmark Capital. 08:40:12
Q. And what is your position? 08:40:13
A. I'm a general partner. 08:40:15
Q. Can you -- how long have you been a general 08:40:18
partner at Benchmark? 08:40:20
A. Since '99. 08:40:22
Q. Do you have any knowledge about the Benchmark 08:40:27
initial investment into Uber? 08:40:30
A. Yes. 08:40:30
Q. What was your relationship to that? 08:40:33
A. I was the lead partner on effecting the 08:40:36
investment in January of 2011. 08:40:40
Q. So just to clarify, the investment became 08:40:45
effective in January of 2011? 08:40:47

Page 11

1	BY MR. VERHOEVEN:	08:41:53
2	Q. Do you have the question in mind?	08:41:56
3	MR. FLUMENBAUM: You can ask for it to be	08:41:58
4	repeated.	08:41:58
5	THE WITNESS: No. No. I'm fine.	08:42:01
6	Yes.	
7	BY MR. VERHOEVEN:	
8	Q. When was that?	08:42:02
9	A. I don't have a specific recollection of that	08:42:04
10	date in -- the window.	08:42:05
11	Q. Was it after you -- excuse me.	08:42:07
12	Was it after Benchmark had invested in Uber?	08:42:12
13	A. Yes.	08:42:12
14	Q. Given that you don't have a specific window,	08:42:16
15	can you ballpark it for me, what year it was?	08:42:26
16	MR. FLUMENBAUM: Objection as to form.	08:42:32
17	THE WITNESS: My best recollection would be that	08:42:35
18	it -- around the time that it became part of the	08:42:37
19	public lexicon, you know, or slightly before, but I	08:42:41
20	don't recall exactly when that was.	08:42:43
21	BY MR. VERHOEVEN:	08:42:43
22	Q. When did you first discuss this subject with	08:42:48
23	Mr. Kalanick?	08:42:51
24	MR. FLUMENBAUM: Objection as to form.	08:42:51
25	You may answer.	08:42:54

1 THE WITNESS: I don't have a specific recollection 08:42:55
2 of the first time. 08:42:57
3 BY MR. VERHOEVEN: 08:42:57
4 Q. Do you have a recollection of discussing this 08:43:00
5 technology with Mr. Kalanick? 08:43:03
6 A. I'm certain that it was discussed at some 08:43:05
7 point, yes. 08:43:06
8 Q. What's your best estimate of what that point 08:43:09
9 was? 08:43:09
10 A. My best guess would be probably 2015, 08:43:16
11 beginning of 2015, something like that. 08:43:18
12 Q. Okay. Could you tell me what Mr. Kalanick 08:43:23
13 said to you? 08:43:26
14 A. I don't have specific recollection of 08:43:28
15 specific language. 08:43:30
16 Q. Generally? 08:43:32
17 A. Mr. Kalanick had a -- has a strong belief, 08:43:50
18 that I think is mirrored in his comments in the public 08:43:53
19 record, that this was an important technology related 08:43:56
20 to Uber. 08:43:58
21 Q. Related to what? 08:44:07
22 MR. FLUMENBAUM: "Related to Uber." 08:44:09
23 THE WITNESS: Sorry. 08:44:10
24 BY MR. VERHOEVEN: 08:44:10
25 Q. Sorry. 08:44:10

1 A. That's okay. 08:44:11

2 Q. And why did he say it was related to Uber? 08:44:16

3 A. I think there's also a lot of public 08:44:23

4 discourse about this notion, but there's -- obviously, 08:44:29

5 because the service is reliant on vehicles, to the 08:44:32

6 extent the vehicles became automated, it had the 08:44:35

7 potential to impact the business and its relationship 08:44:39

8 with drivers and all those things. 08:44:42

9 Q. He told you it was really important to Uber's 08:44:45

10 business; right? 08:44:47

11 MR. BRILLE: Objection; form. 08:44:49

12 MR. FLUMENBAUM: You may answer. 08:44:50

13 THE WITNESS: I think it's a fair statement. 08:44:52

14 BY MR. VERHOEVEN: 08:44:52

15 Q. Okay. Did he tell you it was an existential 08:44:54

16 threat? 08:44:56

17 A. He was quoted publicly as saying that. I 08:44:59

18 don't recall him telling me specifically that. 08:45:01

19 Q. Did you agree with him? 08:45:03

20 A. I don't agree with that assertion. 08:45:05

21 Q. Okay. Do you think that autonomous vehicle 08:45:09

22 technology is important to Uber? 08:45:12

23 A. It could be important. 08:45:13

24 Q. When would it not be important? 08:45:16

25 A. Well, there's an argument that the technology 08:45:19

1 threatens the service provider. I don't think, from 08:45:23
2 my own point of view, that anything Boeing builds 08:45:28
3 threatens United or Delta's business, from my point of 08:45:31
4 view. I have a different point of view on that topic 08:45:37
5 than he does. 08:45:38

6 Q. Okay. In what instances would it be a 08:45:40
7 threat? 08:45:41

8 MR. FLUMENBAUM: Objection as to form. 08:45:45

9 Could you be a little more clear, given his 08:45:47
10 prior answer? 08:45:48

11 BY MR. VERHOEVEN: 08:45:48

12 Q. Okay. I asked you, quote, "Do you think that 08:46:10
13 autonomous vehicle" -- the whole question isn't in 08:46:17
14 there. 08:46:17

15 I asked you whether you thought autonomous 08:46:20
16 vehicle technology would be important to Uber, and you 08:46:23
17 said, "It could be important." 08:46:24

18 Do you remember that? 08:46:25

19 A. Yes. 08:46:25

20 Q. Okay. Why could it be important? 08:46:29

21 A. There are cars that underline the operations 08:46:34
22 of the service. There are drivers that are in those 08:46:37
23 cars. There's the relationships between the drivers 08:46:40
24 and the -- that are important to the company. And so 08:46:43
25 if this new technology came along that displaced 08:46:47

Page 16

1 implication? 08:47:57

2 BY MR. VERHOEVEN: 08:47:57

3 Q. Yes. 08:47:58

4 A. Sure. Yes. Theoretically. Actually, let me 08:48:02

5 step back. 08:48:03

6 That would be heavily dependent on the cost 08:48:05

7 of the vehicle. Because if the vehicle cost 5X more 08:48:09

8 than a traditional vehicle, it would more than offset 08:48:13

9 the cost of the driver, in which case I don't think it 08:48:16

10 would have an impact at all. 08:48:17

11 Q. What is the cost to Uber for the human driver 08:48:20

12 expressed as a percentage of dollar revenue, if you 08:48:28

13 know? 08:48:28

14 A. What percentage of the revenue goes to the 08:48:32

15 driver? 08:48:33

16 Q. Yes. 08:48:34

17 A. I don't know if that's privileged or not. I 08:48:37

18 just don't know. 08:48:39

19 MR. BRILLE: So we have a protective order in the 08:48:42

20 case. And it is definitely highly confidential. And 08:48:45

21 we will designate anything that is business 08:48:47

22 confidential -- 08:48:48

23 THE WITNESS: Okay.

24 MR. FLUMENBAUM: Is it -- do I have to invoke the 08:48:52

25 protective order for purposes of this deposition? 08:48:54

HIGHLY CONFIDENTIAL - ATTORNEYS EYES ONLY

1 MR. BRILLE: You do not. We have an agreement 08:48:56
2 with the other side that we designate transcripts 08:48:59
3 after they come out, and we will take care of 08:49:01
4 something like that. 08:49:02
5 MR. FLUMENBAUM: So as far as I'm concerned, this 08:49:04
6 is -- so any business confidential information -- 08:49:06
7 MR. BRILLE: Correct. 08:49:07
8 MR. FLUMENBAUM: -- he can testify to? 08:49:08
9 MR. BRILLE: Yes, that is correct. 08:49:09
10 MR. FLUMENBAUM: Okay. And I don't have to -- do 08:49:09
11 I get to review the transcript as well? 08:49:13
12 MR. BRILLE: Yes. Absolutely. 08:49:14
13 MR. FLUMENBAUM: Okay. So I just want to make 08:49:15
14 sure that I have that opportunity as well. 08:49:18
15 MR. BRILLE: Yeah. 08:49:19
16 MR. FLUMENBAUM: And in the meantime, who can 08:49:21
17 share this deposition? 08:49:23
18 MR. BRILLE: In -- 08:49:27
19 MR. FLUMENBAUM: Until we review this stuff? 08:49:29
20 MR. VERHOEVEN: Should we go off the record for 08:49:30
21 this.
22 MR. BRILLE: Let's go off the record, yes. 08:49:33
23 THE VIDEOGRAPHER: Off the record at 8:49 a.m. 08:49:36
24 (Discussion off the record.) 08:49:55
25 THE VIDEOGRAPHER: Back on the record at 8:49 a.m. 08:49:58

Page 18

1 BY MR. VERHOEVEN: 08:49:58

2 Q. I think you're allowed to answer the 08:50:02

3 question. 08:50:02

4 A. I honestly don't have the documents right in 08:50:04

5 front of me, so -- 08:50:05

6 Q. Of course.

7 A. And I would also say different services have 08:50:08

8 different answers on this, so there's no specifics. 08:50:11

9 But somewhere between, you know, 75 and 80 percent, 08:50:15

10 typically, of the revenue goes to the driver. 08:50:19

11 Q. And so if you didn't have to pay drivers and 08:50:23

12 you could use an autonomous vehicle for your service, 08:50:26

13 that would be a huge competitive advantage, assuming 08:50:29

14 others couldn't do that? 08:50:32

15 A. Depends on the depreciation cost of the car. 08:50:36

16 If the vehicle costs five times more than a standard 08:50:40

17 car, you have to eat that depreciation cost to deliver 08:50:40

18 that service.

19 Q. But if the vehicle is roughly similarly 08:50:43

20 priced as a regular car, there would be a huge 08:50:46

21 advantage for the first mover in that technology; 08:50:50

22 right? 08:50:50

23 MR. FLUMENBAUM: Objection as to form. 08:50:52

24 You're speculating. 08:50:54

25 MR. VERHOEVEN: Counsel, I don't know if you're 08:50:56

1 familiar with Judge Alsup's rules, but he does not 08:50:59
2 allow anything -- you're not allowed to say anything 08:51:03
3 more than "object to form." 08:51:04
4 MR. FLUMENBAUM: Okay. Objection as to form. 08:51:06
5 BY MR. VERHOEVEN: 08:51:06
6 Q. Do you have the question in mind? 08:51:08
7 A. No one has delivered a fully autonomous 08:51:10
8 vehicle that could operate in a massive service at 08:51:14
9 scale. So knowing -- presuming that you know the cost 08:51:17
10 of that would be speculative, from my point of view. 08:51:21
11 So, yes, if you could do it, then, yes, that would be 08:51:25
12 true. 08:51:25
13 Q. If you could -- if you were a first mover 08:51:27
14 with working, approved autonomous vehicles in your 08:51:33
15 business model, that entity would have a huge 08:51:37
16 advantage competitively? 08:51:39
17 MR. FLUMENBAUM: Objection; form. 08:51:40
18 THE WITNESS: If you could move millions of units 08:51:43
19 at scale at a price that's equivalent to a normal car, 08:51:47
20 which, I would argue, is very hard to prove someone 08:51:50
21 could do at this moment in time. But, yes. 08:51:53
22 BY MR. VERHOEVEN: 08:51:53
23 Q. Okay. And that's why Mr. Kalanick was really 08:51:57
24 interested in developing autonomous vehicle 08:51:59
25 technology; right? 08:52:01

1 MR. FLUMENBAUM: Objection as to form. 08:52:06

2 THE WITNESS: I think that's fair. 08:52:08

3 BY MR. VERHOEVEN: 08:52:08

4 Q. Did you -- in this conversation we're talking 08:52:16

5 about with Mr. Kalanick, did you express to him your 08:52:22

6 view on whether Uber should move forward with this 08:52:27

7 technology? 08:52:29

8 MR. BRILLE: Objection; form. 08:52:33

9 THE WITNESS: Keep going? 08:52:34

10 BY MR. VERHOEVEN: 08:52:34

11 Q. Every time there's an objection to form, you 08:52:38

12 still have to answer. 08:52:39

13 MR. FLUMENBAUM: You have to answer. I'm not

14 going to tell you not to.

15 THE WITNESS: Okay, great.

16 So, yes, we did have those discussions, 08:52:41

17 including the points that I just made. We also 08:52:44

18 discussed the notion that it wouldn't be critical -- 08:52:50

19 and this is similar to what you were saying. It's not 08:52:54

20 critical for a service provider, a ridesharing service 08:52:59

21 provider, to be the leader in this technology. 08:53:03

22 It's critical that someone else not have 08:53:05

23 unfettered access to differentiated technology. So 08:53:11

24 that if -- in other words, if the automated car were 08:53:15

25 commoditized, then it would probably have zero impact 08:53:19

1 on the state of affairs in the service provider 08:53:22

2 industry. 08:53:22

3 BY MR. VERHOEVEN: 08:53:22

4 Q. Mr. Kalanick wanted to be the first with a 08:53:25

5 vehicle that had this technology in the marketplace, 08:53:27

6 didn't he? 08:53:28

7 MR. FLUMENBAUM: Objection as to form. 08:53:31

8 THE WITNESS: I don't have specific recollection 08:53:32

9 that he said, I definitely want to be first in this 08:53:36

10 technology. But that's different from whether or not 08:53:41

11 he did want to be first. I just don't have a specific 08:53:43

12 recollection. 08:53:44

13 BY MR. VERHOEVEN: 08:53:44

14 Q. So he never told you that he wanted to be the 08:53:47

15 first mover with this technology? 08:53:50

16 A. I don't have a recollection of that specific 08:53:52

17 statement. 08:53:53

18 Q. He never told you that it would be a huge 08:53:55

19 advantage if you were the first company out there in 08:53:59

20 the market with this technology? 08:54:02

21 A. I don't recall that specific statement, but I 08:54:04

22 also recall conversations where -- the flip side of 08:54:09

23 that, where as long as the -- you're not second -- 08:54:15

24 like that was a frequent topic. As long as you're not 08:54:19

25 far behind, which gets back to this notion of 08:54:23

1 potential commoditization of that technology. 08:54:27

2 Q. So you're saying -- you don't recall if he 08:54:30

3 said it's important to be first, but as long as you're 08:54:34

4 not second, that's okay? 08:54:35

5 A. Yes, we had that conversation. There's a 08:54:37

6 difference. 08:54:38

7 Q. Okay. Did there come a time when Uber 08:54:46

8 started investing its money into this technology, this 08:54:52

9 autonomous vehicle technology? 08:54:54

10 A. Yes. 08:54:54

11 Q. When was that? 08:54:55

12 A. My first recollection of a substantial effort 08:54:59

13 related to the Carnegie Mellon transaction. 08:55:05

14 Q. And what do you mean when you say "the 08:55:07

15 Carnegie Mellon transaction"? 08:55:08

16 A. Once again, I think this is public record, so 08:55:14

17 you could find it with a Google search, but there was 08:55:17

18 a large transaction that involved some of the 08:55:20

19 employees of Carnegie Mellon coming on board -- or 08:55:24

20 some of the people associated with Carnegie Mellon 08:55:26

21 coming on board. And we set up a research 08:55:30

22 headquarters for autonomous in Pittsburgh. 08:55:33

23 Q. So was that a transaction with the group that 08:55:37

24 came over? You said there was a large transaction. 08:55:44

25 MR. BRILLE: Objection; form. 08:55:45

1 THE WITNESS: I don't understand the question. 08:55:48

2 BY MR. VERHOEVEN: 08:55:48

3 Q. Well, you said there's a large transaction in 08:55:50

4 which a number of Carnegie Mellon folks came over. 08:55:54

5 A. Correct. 08:55:54

6 Q. And you set up a lab, or whatever you want to 08:55:58

7 call it, in Pittsburgh; right? 08:55:59

8 A. Right. 08:55:59

9 Q. And so my question was, when you say "a large 08:56:03

10 transaction," are you referring to like a single 08:56:05

11 transaction where the whole group came over -- 08:56:08

12 A. I don't remember exactly if there were 08:56:10

13 multiple pieces in that. I'm just referring to it as 08:56:13

14 a single event. 08:56:15

15 Q. Did the board review and approve that? 08:56:18

16 A. I believe so. 08:56:19

17 Q. Okay. And what did Mr. -- who presented 08:56:26

18 the -- who recommended it to the board? 08:56:29

19 A. I don't have specific recollection of like 08:56:36

20 who presented it, but I -- my best guess would be that 08:56:42

21 it was Mr. Kalanick. 08:56:43

22 Q. But you don't remember what he said in 08:56:45

23 connection with that? 08:56:47

24 A. I don't, not at this moment in time. 08:56:50

25 Q. Do you remember any discussions by the board 08:56:59

1 about the importance of this technology, autonomous 08:57:05
2 vehicle technology? 08:57:07
3 MR. FLUMENBAUM: At around the time of the 08:57:08
4 Carnegie Mellon issue? 08:57:10
5 MR. VERHOEVEN: I asked my question; you can't 08:57:12
6 edit it. 08:57:15
7 BY MR. VERHOEVEN: 08:57:15
8 Q. Go ahead.
9 MR. BRILLE: But he can ask for clarification. 08:57:17
10 MR. VERHOEVEN: There's no -- you can object to 08:57:19
11 form or you can object on privilege grounds, nothing 08:57:22
12 else. 08:57:23
13 MR. FLUMENBAUM: Objection as to form. 08:57:27
14 BY MR. VERHOEVEN: 08:57:27
15 Q. Okay. Do you recall any discussions at the 08:57:29
16 board level about the importance of this technology? 08:57:33
17 A. Only -- yes, but only in a general sense. I 08:57:36
18 don't recall any specific one-on-one conversation. 08:57:41
19 Q. So when you say "in a general sense," you 08:57:44
20 mean in the sense of a presentation being made to the 08:57:47
21 group? 08:57:48
22 A. No, I just mean in the sense that it was 08:57:54
23 discussed more than once that autonomous technology 08:58:02
24 was important to ridesharing and that we needed to 08:58:07
25 have an understanding of that, an effort in that, and 08:58:13

Page 25

1 know where that technology was evolving relative to 08:58:16
2 our service. 08:58:17
3 Q. And how often did this come up with the 08:58:21
4 board? 08:58:22
5 A. I would say only -- around Carnegie Mellon 08:58:39
6 and Otto were the only two times where it was 08:58:43
7 discussed in depth. I don't think it was a frequent 08:58:50
8 topic of every board meeting. 08:58:52
9 Q. Are you still with -- on the board at Uber? 08:59:05
10 A. I am not. 08:59:06
11 Q. When did you cease being on the board? 08:59:08
12 A. I believe it was mid to late June of this 08:59:17
13 year. 08:59:17
14 Q. And I may have asked this and, if I did, I 08:59:22
15 apologize. 08:59:22
16 But when did you first become a board member? 08:59:25
17 A. In January of 2011. 08:59:27
18 Q. When you were a member of the board, is it a 08:59:33
19 fair statement to say that you were very engaged with 08:59:37
20 the company? 08:59:41
21 MR. FLUMENBAUM: Objection as to form. 08:59:51
22 THE WITNESS: I'll answer yes. There's a question 08:59:54
23 as to whether -- like relative to what, you know. 08:59:58
24 BY MR. VERHOEVEN: 08:59:58
25 Q. Is it fair to say that you were the most 09:00:00

Page 26

1 engaged board member with respect to Uber? 09:00:03

2 MR. FLUMENBAUM: Objection as to form. 09:00:14

3 THE WITNESS: It's possible. It would be 09:00:15

4 conjecture from my point solely because I don't know 09:00:19

5 of all the other meetings that the other board members 09:00:22

6 may or may not have been having. 09:00:24

7 BY MR. VERHOEVEN: 09:00:24

8 Q. Do you feel as though you were the most 09:00:26

9 engaged board member? 09:00:28

10 MR. BRILLE: Objection; form. 09:00:29

11 MR. FLUMENBAUM: Objection as to form. 09:00:29

12 THE WITNESS: It's possible. 09:00:32

13 BY MR. VERHOEVEN: 09:00:32

14 Q. Can you think of anyone else on the board who 09:00:35

15 was more engaged than you? 09:00:38

16 A. No. 09:00:41

17 Q. You were also -- in addition to being a 09:00:45

18 member of the board of directors, you were also on the 09:00:48

19 compensation committee; is that right? 09:00:50

20 A. That is correct. 09:00:51

21 Q. And what was your role on the compensation 09:00:55

22 committee? 09:00:58

23 A. Compensation committee would look over all 09:01:02

24 material compensation requests for new hires. We'd 09:01:11

25 get involved in review process, bonus determination. 09:01:20

1 Q. Okay. Anything else, generally? 09:01:24

2 A. Look after the long-term compensation 09:01:30

3 structure of the company and how those programs work 09:01:34

4 and are set up, how they scale. 09:01:37

5 Q. Were you on any other committees at Uber 09:01:41

6 besides the compensation committee? 09:01:43

7 A. I joined the audit committee in, I believe, 09:01:48

8 March. It might have been February. Sometime in 09:01:53

9 the -- early 2017. 09:01:55

10 Q. You said the audit committee? 09:01:59

11 A. Yes. 09:01:59

12 Q. And what were your responsibilities on the 09:02:02

13 audit committee? 09:02:04

14 A. To interface with PwC, our lead auditor, to 09:02:10

15 review the status of the audits. To interface with 09:02:21

16 the internal audit function. To interface with the 09:02:25

17 compliance function. To work with the other members 09:02:28

18 of the committee on all those topics. 09:02:30

19 Q. What is the compliance function? 09:02:35

20 A. Like many other companies, Uber has a chief 09:02:41

21 compliance officer that looks after internal 09:02:47

22 investigation, whistle-blower claims, those kind of 09:02:51

23 things. 09:02:52

24 Q. Were you on any other committees when you 09:02:55

25 were working at Uber? 09:02:56

Page 29

1 follow that instruction. 09:04:26

2 But -- so to the extent that you know about 09:04:29

3 the preliminary injunction from other sources other 09:04:32

4 than counsel, and that could include public -- 09:04:38

5 THE WITNESS: Yeah, it was in the media, so I'm 09:04:40

6 aware of it from that. 09:04:43

7 MR. FLUMENBAUM: Okay. 09:04:43

8 BY MR. VERHOEVEN:

9 Q. Relative to that event, was the committee 09:04:49

10 formed before or after? 09:04:53

11 A. To the best of my knowledge, after. 09:04:55

12 Q. Who was on that committee? 09:05:00

13 A. I believe myself, David Bonderman and Arianna 09:05:07

14 Huffington. 09:05:10

15 Q. All right. Have you exhausted the list of 09:05:16

16 committees that you can recall being on? 09:05:19

17 A. Yes. 09:05:20

18 Q. Is it a fair statement to say that in the 09:05:44

19 years 2016, '15 and until you left the board in '17, 09:05:52

20 that you were in regular contact with Mr. Kalanick 09:05:56

21 about Uber? 09:05:59

22 MR. FLUMENBAUM: Objection as to form. 09:06:00

23 You may answer. 09:06:02

24 THE WITNESS: So certainly he -- we were both 09:06:09

25 present at most board meetings, so we had contact 09:06:13

1 through that. In terms of one-on-one contact, there 09:06:17
2 would be periods where there would be lots of it, 09:06:20
3 typically around recruiting, that kind of thing, and 09:06:23
4 then there would be periods where there wouldn't be 09:06:26
5 much. So it wasn't consistent through that time 09:06:29
6 frame. 09:06:30

7 BY MR. VERHOEVEN: 09:06:30

8 Q. Around May 2016, is it fair to say that you 09:06:35
9 were in regular contact with Mr. Kalanick concerning 09:06:38
10 his management of Uber? 09:06:41

11 A. I just want to be careful with the definition 09:06:52
12 of "regular." I'd say consistent amount of contact 09:06:56
13 that we have with all the types of companies that we 09:07:00
14 invest in. It wasn't abnormally high or low. 09:07:07

15 Q. When did you first -- you 09:07:13
16 referenced -- withdrawn. 09:07:16

17 You referenced the Otto transaction earlier 09:07:20
18 in your testimony. 09:07:21

19 A. Um-hum. 09:07:22

20 Q. When did you first learn about the 09:07:24
21 possibility of that transaction? 09:07:26

22 A. Shortly before the board approved it. 09:07:30

23 Q. When did the board approve it? 09:07:34

24 A. I don't have the date in front of me. 09:07:37

25 Q. Who told you about it before the board 09:07:45

1 approved it? How did you learn about it? 09:07:47

2 A. I don't have a specific recollection. It's 09:07:49

3 common -- it was fairly common during my board tenure 09:07:53

4 at Uber to get a call from either Emil Michael or 09:07:58

5 Cameron a day or two before a board meeting to brief 09:08:03

6 us on something. And that may have happened in that 09:08:06

7 case. I don't have a specific recollection, but that 09:08:09

8 would be the standard protocol. 09:08:11

9 Q. Did you do any investigation or diligence 09:08:13

10 into the transaction yourself before approving it? 09:08:17

11 A. No. 09:08:17

12 Q. Why not? 09:08:19

13 A. There was a discussion at the board level 09:08:22

14 about the due diligence that had been done, and I 09:08:25

15 relied on that conveyance. 09:08:28

16 Q. So the only discussion you had about the 09:08:29

17 diligence was at the meeting in which the transaction 09:08:32

18 was approved? 09:08:33

19 A. Correct. Correct. 09:08:34

20 MR. VERHOEVEN: Let's get out the board . . . this 09:08:51

21 been previously marked? 09:08:53

22 MR. JUDAH: It has been. 09:08:57

23 MR. VERHOEVEN: Can we mark another one? 09:09:00

24 MR. JUDAH: Yes. 09:09:01

25 MR. VERHOEVEN: Can you mark this as Exhibit 910. 09:09:06

1 (Plaintiff's Exhibit 910 was marked.) 09:09:35

2 BY MR. VERHOEVEN:

3 Q. Mr. Gurley, take a look at Exhibit 910. 09:09:38

4 And my first question will be, do you 09:09:41

5 recognize this document? 09:09:44

6 (Witness reviews document.) 09:10:13

7 A. Yes, I believe these are the slides that were 09:10:15

8 presented to the board in that meeting that we were 09:10:18

9 just discussing. 09:10:19

10 Q. The meeting in which the Otto transaction was 09:10:22

11 approved? 09:10:23

12 A. Yes. 09:10:23

13 Q. It says, "Project Zing Review." 09:10:27

14 What does "Zing" refer to? 09:10:29

15 A. I don't have any data on that topic. 09:10:31

16 Q. Would it be fair to conclude that it refers 09:10:34

17 to the Otto transaction? 09:10:36

18 A. Yes. 09:10:36

19 Q. And it's dated April 11th, 2016. 09:10:40

20 Do you see that? 09:10:41

21 A. Yes. 09:10:41

22 Q. Is that the day in which the board approved 09:10:45

23 the Otto transaction? 09:10:46

24 A. I would presume so. 09:10:54

25 Q. The second page -- direct your attention to 09:10:57

1 the second page where it says, "Deal Overview." And 09:11:01
2 in particular, under the row that says, "Rationale" 09:11:06
3 and the column that says, "Consumer Lasers," I want to 09:11:10
4 ask you a couple questions. 09:11:12

5 Do you see it says, "Lasers are critical to 09:11:18
6 Uber's AV development and Ottomotto is expected to 09:11:23
7 de-risk our current laser approach"? 09:11:25

8 A. Yes, I see that. 09:11:30

9 Q. Who was making this presentation? 09:11:39

10 A. To the best of my memory, it was 09:11:41

11 Mr. Kalanick. 09:11:41

12 Q. And what was your understanding of what he 09:11:45

13 meant when he said, "Lasers are critical to Uber's AV 09:11:50

14 development"? 09:11:51

15 MR. FLUMENBAUM: Objection as to form. 09:11:51

16 You may answer. 09:11:54

17 THE WITNESS: To the best of my memory, we didn't 09:11:57

18 spend a lot of time dwelling on that topic. My best 09:12:03

19 inference of what that would mean is simply that 09:12:08

20 lasers are important to autonomous vehicles from the 09:12:11

21 company's point of view. 09:12:13

22 BY MR. VERHOEVEN: 09:12:13

23 Q. Well, it says, "critical"; right? 09:12:13

24 A. It does. 09:12:16

25 Q. Did you disagree with that statement? 09:12:19

1 A. I did not. 09:12:20

2 Q. Then it continues on that sentence, 09:12:22

3 "Ottomotto is expected to de-risk our current laser 09:12:26

4 approach." 09:12:26

5 You understand that meant that purchasing 09:12:31

6 Ottomotto would give you laser technology and, 09:12:36

7 therefore, de-risk what you're currently doing? 09:12:39

8 MR. FLUMENBAUM: Objection as to form. 09:12:43

9 THE WITNESS: Like I said, there wasn't much 09:12:48

10 discussion on that particular topic, nor would I 09:12:51

11 suggest that the board as a whole has much deep 09:12:55

12 knowledge on laser technology, so I think it would be 09:12:57

13 taken as it's given. 09:13:00

14 BY MR. VERHOEVEN: 09:13:00

15 Q. Did you understand that the rationale for the 09:13:06

16 deal was to de-risk Uber's current laser approach? 09:13:12

17 A. That's written here, so I wouldn't object to 09:13:22

18 that notion. 09:13:23

19 Q. You don't disagree with that. 09:13:25

20 A. No, I do not. 09:13:26

21 Q. The second bullet in that cell says, 09:13:34

22 "Ottomotto could significantly enhance our overall AV 09:13:38

23 efforts and potentially accelerate current time 09:13:42

24 frames." 09:13:42

25 Do you see that? 09:13:43

1 A. Yes. 09:13:43

2 MR. FLUMENBAUM: "Timelines." 09:13:47

3 BY MR. VERHOEVEN:

4 Q. "Timelines." 09:13:48

5 Do you see that? 09:13:49

6 A. Yes, I do. 09:13:50

7 Q. Why did Mr. Kalanick think that the Ottomotto 09:13:56

8 transaction could accelerate timelines? 09:13:58

9 A. On this topic, there was more discussion. I 09:14:02

10 think it's a general belief with all the companies we 09:14:08

11 work with that in order to be successful in new 09:14:13

12 endeavors, you have to have the right people on board. 09:14:17

13 And this entire transaction, as it was presented and 09:14:21

14 discussed with the board, was about helping us get the 09:14:25

15 right people on board who could be helpful in our 09:14:28

16 autonomous efforts. 09:14:30

17 Q. So getting the right people on board would 09:14:33

18 accelerate your timelines? 09:14:35

19 A. Yes. 09:14:35

20 Q. Okay. And then when you say getting "the 09:14:43

21 right people," if you look down to the row -- same 09:14:46

22 column, but the row that says, "Terms," you'll see 09:14:51

23 there's a bullet that says, "Minimum of 25 engineers 09:14:54

24 to join Uber. Could be as many as 50 to 100." 09:14:57

25 Do you see that? 09:14:59

1 A. Yes. 09:14:59

2 Q. You understood at the time that Uber was 09:15:03

3 formed by former employees of Waymo/Google? 09:15:08

4 MR. BRILLE: Objection; form. 09:15:08

5 You said, "Uber." 09:15:10

6 MR. VERHOEVEN: Thank you for catching that. 09:15:14

7 BY MR. VERHOEVEN: 09:15:14

8 Q. You understood that Otto was formed by former 09:15:19

9 employees from Waymo and Google? 09:15:22

10 MR. FLUMENBAUM: Objection as to form. 09:15:25

11 You may -- 09:15:25

12 THE WITNESS: It was -- it was my knowledge that 09:15:30

13 some of the employees of Otto were from Google, yes. 09:15:34

14 BY MR. VERHOEVEN: 09:15:34

15 Q. Well, this phrase, "minimum of 25 engineers," 09:15:37

16 that was a term of the acquisition; right? 09:15:40

17 A. It's listed here, yes. 09:15:45

18 Q. And that was a reference to former 09:15:48

19 Google/Waymo engineers; right? 09:15:52

20 A. I don't have any data that would suggest that 09:15:55

21 that -- that's relating to Otto engineers, as I 09:16:00

22 interpret this. 09:16:02

23 Q. You don't remember that part of the value of 09:16:05

24 the transaction was Otto had this expertise that they 09:16:08

25 developed while they worked at Google on lasers? 09:16:12

1 MR. BRILLE: Objection; form. 09:16:14

2 THE WITNESS: I have no recollection, nor do I 09:16:18

3 have any data that suggests that this was specifically 09:16:22

4 tied to Google engineers. And that was my 09:16:24

5 interpretation of your question. 09:16:28

6 BY MR. VERHOEVEN: 09:16:28

7 Q. Well, if you said the goal was to get the 09:16:31

8 right people to accelerate timelines, did you ask any 09:16:36

9 questions or was there any discussions of whether 09:16:38

10 these 25 engineers were the, quote-unquote, right 09:16:41

11 people? 09:16:43

12 A. By that moment in time, because of the 09:16:46

13 efforts in Pittsburgh that we've already discussed, 09:16:50

14 you know, I would presume that the company itself had 09:16:53

15 knowledge of who the right people were or who they 09:16:56

16 weren't. And so I don't think it would be typical for 09:17:01

17 the board to go down into that depth and say, well, 09:17:05

18 what do you mean? Are you sure these are the right 09:17:08

19 people? That just wouldn't be a standard practice. 09:17:11

20 Q. Is it your testimony here that, as of this 09:17:14

21 date, you had no knowledge that part of this -- value 09:17:19

22 of this transaction was obtaining the at least 09:17:24

23 know-how of engineers who had experience working with 09:17:31

24 Google? 09:17:32

25 MR. FLUMENBAUM: Objection as to form. 09:17:35

1 MR. BRILLE: Same objection. 09:17:39

2 THE WITNESS: I would state it differently, which 09:17:43

3 is, the goal was to get engineers that were good at 09:17:50

4 autonomous, just as if we were going out to get 09:17:53

5 engineers good at AI or engineers good at machine 09:17:57

6 learning. Where those people had developed that was 09:18:00

7 not material to the transaction, as long as they were 09:18:04

8 experienced. 09:18:06

9 BY MR. VERHOEVEN: 09:18:06

10 Q. Is it your testimony, sir, that you didn't 09:18:09

11 know that most of these engineers referred to here 09:18:12

12 came from Google? 09:18:14

13 A. I knew that some of them did, for sure, and 09:18:18

14 we already talked about that. 09:18:21

15 Q. Which ones did you know did? 09:18:23

16 A. I didn't have specifics. I knew Anthony did. 09:18:26

17 Q. And what was his position at Otto? 09:18:30

18 A. As far as I understand it, he was the leader 09:18:36

19 of the effort. 09:18:38

20 Q. And as far as you understand it, he put the 09:18:40

21 team together; right? 09:18:41

22 A. I don't have any data to dispute that notion. 09:18:47

23 I would assume that. I don't know that for a fact. 09:18:50

24 Q. Was there value in this acquisition due to 09:18:54

25 the fact that you'd be making Mr. Levandowski part of 09:18:58

1 Uber? 09:19:00

2 A. That was a strong argument for doing the 09:19:03

3 transaction, yes. 09:19:04

4 Q. And why was it a strong argument? 09:19:08

5 A. Mr. Kalanick presented to the board that he 09:19:12

6 was one of the premier minds in the world on 09:19:16

7 autonomous vehicles and that it would be a benefit to 09:19:18

8 the company if he became an employee. 09:19:20

9 Q. Did Mr. Kalanick also say that he had a team 09:19:24

10 of engineers from Google with him? 09:19:30

11 A. He had a team of engineers. It was my 09:19:32

12 presumption that some of them were from Google, but I 09:19:35

13 don't have data to suggest all of them were or that 09:19:39

14 that was part -- 09:19:40

15 Q. I'm just asking if he told you that at the 09:19:43

16 meeting, that part of the value was that -- in 09:19:44

17 addition to the fact that Mr. Levandowski was heading 09:19:49

18 up Ottomotto, was the additional fact that he had 09:19:55

19 hired a team to work with him that used to work with 09:19:59

20 him at Google? 09:20:00

21 MR. BRILLE: Objection; form. 09:20:09

22 THE WITNESS: There's nothing in here that reads 09:20:11

23 exactly as you're saying it. Certainly we were left 09:20:15

24 with the impression that they were -- that he had left 09:20:19

25 Google and put together a team and that some of those 09:20:22

1 people were from Google. I don't have knowledge as to 09:20:25
2 the exact percentage. 09:20:27
3 BY MR. VERHOEVEN: 09:20:27
4 Q. Right, but did he say that at the meeting or 09:20:31
5 something to that effect? 09:20:32
6 MR. FLUMENBAUM: Objection as to form. 09:20:43
7 THE WITNESS: I don't have a specific recollection 09:20:44
8 of exactly what was said. I was left with the 09:20:47
9 impression that some of them came from Google, which 09:20:50
10 we already discussed. 09:20:52
11 BY MR. VERHOEVEN: 09:20:52
12 Q. Why was there a condition in the terms of the 09:21:01
13 acquisition that required Uber to have a minimum of 25 09:21:08
14 engineers? 09:21:11
15 MR. BRILLE: Objection; form. 09:21:19
16 THE WITNESS: I didn't create that term, so I 09:21:21
17 don't know the specifics. I could speculate, 09:21:23
18 but . . . 09:21:25
19 BY MR. VERHOEVEN: 09:21:25
20 Q. Can you think of any other acquisition you've 09:21:28
21 been involved in in your career that had a similar 09:21:30
22 term that required a minimum of a certain number of 09:21:34
23 engineers before you acquired the company? 09:21:38
24 A. I'm aware of transactions that require a 09:21:41
25 certain number of people to come over and join. 09:21:43

1 Because sometimes in an acquisition, people say, I 09:21:46
2 don't want to work for that company and so they don't 09:21:48
3 come over. And so you'll put a minimum requirement on 09:21:52
4 employee retention. 09:21:54
5 Q. In your experience, what would that number 09:21:57
6 typically be? 09:21:59
7 A. Some percentage of the employees. 09:22:01
8 Q. Did you know how many employees Ottomotto had 09:22:07
9 at this time? 09:22:07
10 A. I do not. 09:22:08
11 Q. As a board member, you didn't inform yourself 09:22:16
12 as to how big the company was? 09:22:19
13 A. I don't have recollection of anyone asking 09:22:21
14 that question. 09:22:22
15 Q. You knew it was a start-up; right? 09:22:25
16 A. Yes. 09:22:27
17 Q. You knew it had only existed for a few 09:22:31
18 months; right? 09:22:32
19 A. Yes. 09:22:36
20 Q. You knew it didn't sell any products; right? 09:22:38
21 A. Yes. 09:22:38
22 Q. What was its value, if it didn't sell any 09:22:47
23 products and it had only existed for a few months? 09:22:49
24 A. As I had stated previously, there was an 09:22:53
25 argument made about Anthony and his individual 09:22:57

1 talents. And, you know, there was points made about 09:23:01
2 the impact at having the right people on board could 09:23:06
3 have on our ability to execute. 09:23:08
4 Q. So it was the knowledge of Mr. Levandowski 09:23:11
5 and the 25 engineers? That was the value? 09:23:16
6 MR. FLUMENBAUM: Objection; form. 09:23:19
7 THE WITNESS: From my perspective, yes. 09:23:22
8 BY MR. VERHOEVEN: 09:23:22
9 Q. The next bullet below the "Minimum" bullet in 09:23:26
10 the same cell says, "Uber will indemnify a minimum of 09:23:31
11 five key employees and Ottomotto for specific claims 09:23:36
12 from former employees, e.g." -- 09:23:41
13 MR. FLUMENBAUM: You're misreading it.
14 MR. BRILLE: Objection; form. 09:23:43
15 MR. FLUMENBAUM: You misread it. 09:23:46
16 BY MR. VERHOEVEN: 09:23:46
17 Q. -- "former employers" -- 09:23:47
18 MR. VERHOEVEN: Thank you again.
19 BY MR. VERHOEVEN::
20 Q. -- "(e.g. IP, non-solicit), subject to 09:23:51
21 certain restrictions and limitations." 09:23:54
22 Do you see that bullet? 09:23:55
23 A. I do. 09:23:57
24 Q. This is a reference to former Google 09:23:59
25 employees; right? 09:24:01

1 MR. FLUMENBAUM: Objection as to form. 09:24:03

2 MR. BRILLE: Same objection. 09:24:05

3 THE WITNESS: I don't know if all five of them are 09:24:07

4 former Google, but I'm not saying they're not. I just 09:24:11

5 don't know. 09:24:12

6 BY MR. VERHOEVEN: 09:24:12

7 Q. You know at this time that there's a 09:24:13

8 possibility that Google/Waymo would bring suit if you 09:24:17

9 acquired Ottomotto; right? 09:24:21

10 MR. FLUMENBAUM: Objection as to form. 09:24:29

11 THE WITNESS: I think it would be safe to say that 09:24:33

12 the notion -- the presence of indemnity would imply 09:24:40

13 that there's a non-zero probability, but I didn't have 09:24:43

14 any specific reason to believe that it was a high 09:24:47

15 probability; otherwise, that would be a risky term. 09:24:52

16 BY MR. VERHOEVEN: 09:24:52

17 Q. Are you aware of any acquisition agreements 09:24:57

18 in which the buyer indemnifies the seller? 09:25:03

19 A. I think that that has happened in other 09:25:19

20 transactions. I don't have any specifics, but it 09:25:22

21 doesn't sound farfetched to me. 09:25:25

22 Q. Typically, it's fair to say that the 09:25:27

23 indemnification runs the other way, that the seller 09:25:31

24 will indemnify the buyer if there's claims; right? 09:25:34

25 A. Sometimes those are highly negotiated issues. 09:25:42

1 For example, in our business, we push back on the type 09:25:46
2 of indemnity you just talked about because it doesn't 09:25:50
3 allow us to distribute funds to our LPs because we 09:25:55
4 would have to have holdback for liability. So we 09:25:59
5 actually do everything we can not to get into the 09:26:01
6 situation you just discussed. 09:26:02

7 Q. Typically, to the extent there is 09:26:04
8 indemnification in the acquisitions, it's the seller 09:26:08
9 who indemnifies the buyer -- 09:26:10

10 A. I've see that -- like I said, that's 09:26:12
11 something we try to avoid. 09:26:14

12 Q. You can't say whether that's a typical use of 09:26:16
13 the indemnification clause? 09:26:19

14 MR. FLUMENBAUM: Object to form. 09:26:19

15 MR. BRILLE: Object to form. 09:26:20

16 THE WITNESS: In my experience, it's atypical 09:26:22
17 because we push back against it. Referring to the 09:26:25
18 notion of the seller indemnifying. 09:26:28

19 BY MR. VERHOEVEN: 09:26:28

20 Q. Can you identify a single transaction that 09:26:30
21 you're aware of in which the buyer indemnifies the 09:26:36
22 seller for activities prior to the acquisition? 09:26:43

23 A. I don't have immediate recollection of a deal 09:26:46
24 like that. 09:26:47

25 Q. Was there a discussion of why there was an 09:26:55

1 indemnification in this transaction from Uber to 09:27:02
2 Ottomotto for acts of the employees of Ottomotto prior 09:27:07
3 to the acquisition? 09:27:08
4 A. Yes, there was discussion of the indemnity. 09:27:12
5 Q. Okay. What do you remember? 09:27:13
6 MR. BRILLE: Objection. 09:27:13
7 I'm just going to instruct the witness, 09:27:16
8 Mr. Gurley, to the extent that it would require you to 09:27:18
9 disclose conversations that you had with lawyers about 09:27:21
10 that issue, I would instruct you not to answer. If 09:27:24
11 you can answer the question without disclosing such 09:27:27
12 communications, you may answer the question. 09:27:29
13 MR. FLUMENBAUM: We're talking specifically about 09:27:30
14 the board meeting. 09:27:31
15 MR. BRILLE: It is, correct. 09:27:33
16 MR. FLUMENBAUM: So -- 09:27:33
17 MR. BRILLE: So just so you have that -- 09:27:36
18 MR. FLUMENBAUM: We're just focused on the board 09:27:39
19 meeting. 09:27:39
20 THE WITNESS: So there was -- questions came up 09:27:46
21 about why we were providing indemnity like this. And 09:27:49
22 it was -- it was disclosed to the board that it was 09:27:55
23 important to the team on the other side. And I think 09:28:00
24 the primary point that was made by Mr. Kalanick and 09:28:08
25 the company was that there had been a due diligence 09:28:11

1 effort done and that it had come back in a clean 09:28:16
2 result and that, based on that due diligence, we 09:28:21
3 should be comfortable moving forward. 09:28:23
4 BY MR. VERHOEVEN: 09:28:23
5 Q. So what did Mr. Kalanick say about this due 09:28:28
6 diligence effort? 09:28:29
7 A. There weren't many details discussed. It 09:28:35
8 was -- at that moment in time at the board meeting, it 09:28:37
9 was stated that there had been a third-party hired -- 09:28:41
10 MR. BRILLE: I'm going to interrupt here. 09:28:44
11 THE WITNESS: Okay.
12 MR. BRILLE: And I'm going to instruct the witness 09:28:46
13 not to answer the question. 09:28:48
14 The due diligence effort, as you know, 09:28:49
15 Charlie, has -- privilege has been asserted over that. 09:28:53
16 Whether --
17 MR. VERHOEVEN: You don't need to make a speech. 09:28:55
18 You can either instruct or whatnot. I don't need a 09:28:56
19 speech to coach the witness. 09:29:00
20 MR. BOOCK: Can the privilege objections be mutual 09:29:03
21 for all parties as well -- 09:29:04
22 MR. VERHOEVEN: Sure, if you all want to take a 09:29:05
23 privilege on a meeting we've been talking about for 09:29:06
24 half an hour. 09:29:08
25 MR. BRILLE: First of all, there's no coaching 09:29:10

1 going on, so don't accuse me of that. 09:29:14

2 MR. VERHOEVEN: Well, then don't do it. 09:29:16

3 MR. BRILLE: Don't accuse me of that, Charlie. 09:29:16

4 Okay. I'm lodging a privilege objection and I'm going 09:29:19

5 to instruct the witness not to answer the question.

6 Don't throw around false accusations in depositions. 09:29:25

7 MR. VERHOEVEN: Then just either instruct or 09:29:26

8 don't. You don't need to explain your reasons. 09:29:30

9 BY MR. VERHOEVEN: 09:29:30

10 Q. So are you going to follow the instruction 09:29:35

11 not to answer that question? 09:29:37

12 MR. FLUMENBAUM: I think we have to until the 09:29:38

13 judge clarifies it. 09:29:40

14 I want to point out for you that there's 09:29:42

15 discussion in this that's consistent with what 09:29:45

16 Mr. Gurley has already testified to. So if you want 09:29:48

17 to stick to this, I think you could probably get more 09:29:53

18 information. 09:29:55

19 MR. VERHOEVEN: Well, we'll see. 09:29:56

20 MR. FLUMENBAUM: All right. 09:29:57

21 BY MR. VERHOEVEN: 09:29:57

22 Q. So what did Mr. Kalanick say about the due 09:30:05

23 diligence effort at the meeting? 09:30:06

24 MR. BRILLE: Same instruction. 09:30:07

25 BY MR. VERHOEVEN: 09:30:07

1 Q. What was the subject of the due diligence? 09:30:13

2 A. There was -- to the best of my knowledge, 09:30:16

3 there was not much more detail than what I've already 09:30:20

4 said, that a third party was hired and that it came 09:30:24

5 back clean. 09:30:25

6 Q. What was the third party looking for? 09:30:27

7 MR. BRILLE: Same instruction. 09:30:28

8 Do not answer. 09:30:29

9 BY MR. VERHOEVEN: 09:30:29

10 Q. Was the subject of the due diligence whether 09:30:32

11 or not there had been a violation of -- withdrawn. 09:30:37

12 Was the substance of the due diligence 09:30:39

13 whether or not these key employees had taken IP from 09:30:47

14 their former employer? 09:30:48

15 MR. BRILLE: Same instruction. 09:31:01

16 BY MR. VERHOEVEN: 09:31:01

17 Q. Did you say anything about the subject of 09:31:03

18 indemnification at the meeting? 09:31:11

19 MR. BRILLE: Same instruction. It's the same 09:31:16

20 instruction. 09:31:17

21 To the extent he's talking about it with his 09:31:19

22 lawyers -- 09:31:20

23 MR. VERHOEVEN: Do you want to confer with him? 09:31:23

24 I'll go off the record if you want to. 09:31:25

25 MR. FLUMENBAUM: He's not talking about 09:31:26

1 communications with lawyers or not. 09:31:28

2 MR. BRILLE: I don't know if he is or not. If 09:31:30

3 he's --

4 MR. VERHOEVEN: Let's go off the record. 09:31:31

5 MR. FLUMENBAUM: There's no reason to go off the 09:31:33

6 record. 09:31:33

7 MR. BRILLE: I'm going to instruct. The 09:31:35

8 instruction stands. 09:31:39

9 MR. FLUMENBAUM: To the extent that you recall 09:31:44

10 saying something to the board as a whole which is not 09:31:47

11 based on conversations with counsel, you can answer 09:31:50

12 that question. I don't believe that -- 09:31:53

13 MR. BRILLE: If it's not based -- I'm still 09:31:55

14 concerned about the disclosure of the privileged 09:31:58

15 discussions in this context. 09:31:59

16 MR. FLUMENBAUM: I've already said that we're 09:32:01

17 going to follow your instruction on that. 09:32:04

18 MR. BRILLE: Yeah, the whole -- in this case, the 09:32:06

19 whole substance of the disclosure report, privilege 09:32:09

20 has been asserted. We're going to maintain that 09:32:11

21 privilege. I'm instructing the witness not to answer 09:32:13

22 the question. 09:32:14

23 MR. BOOCK: We join in all of that. 09:32:19

24 MR. VERHOEVEN: So you will instruct on any 09:32:20

25 question I ask this witness about -- going forward 09:32:24

1 about this bullet in row that says, "Terms" and column 09:32:30
2 that says, "Computer Lasers" that refers to 09:32:33
3 indemnification? 09:32:35
4 MR. BRILLE: I will instruct based on the specific 09:32:38
5 questions you ask, Charlie. And I don't need your 09:32:43
6 colloquy on the record. 09:32:45
7 BY MR. VERHOEVEN: 09:32:45
8 Q. What did you say about the indemnification? 09:32:47
9 MR. BRILLE: Same instructions. 09:32:48
10 BY MR. VERHOEVEN:
11 Q. Do you recall anyone -- you already said 09:32:53
12 that. 09:32:53
13 Other than Mr. Kalanick, who else 09:32:56
14 discussed -- in the board said anything about the 09:33:00
15 indemnification issue? 09:33:02
16 A. I don't have a specific recollection of who 09:33:07
17 said exactly what. 09:33:08
18 Q. Yes or no; did you ask a question about this 09:33:11
19 issue at the meeting? 09:33:12
20 A. It's possible, but I don't recall. 09:33:19
21 Q. You recall that questions were asked; right? 09:33:22
22 A. Yes. 09:33:22
23 Q. But you don't recall who asked them? 09:33:27
24 A. I don't. 09:33:28
25 Q. What was the question that was asked? 09:33:31

1 A. I just don't have a specific recollection of 09:33:35
2 the exact wording in the meeting. There was multiple 09:33:39
3 slides dedicated to indemnity, and I know it was 09:33:44
4 discussed. 09:33:44

5 Q. Okay. Direct your attention to -- there's 09:34:05
6 little control numbers on the bottom right. 09:34:08
7 Do you see those? 09:34:09

8 A. Yes. 09:34:09

9 Q. Direct your attention to the page that ends 09:34:11
10 in 874. And this slide is entitled, "Walkaway Rights 09:34:20
11 and Indemnity Obligations." 09:34:23

12 Do you see that? 09:34:24

13 A. Um-hum. 09:34:25

14 Q. So I'm first going to ask you about the 09:34:31
15 section on this page that has the heading, "When Can 09:34:36
16 We Walk Away?" 09:34:38

17 Do you remember a discussion about when Uber 09:34:47
18 could walk away from the transaction? 09:34:50

19 A. I have a recollection that it was generally 09:35:00
20 discussed, yes. 09:35:01

21 Q. And one of the -- one of the reasons, under 09:35:06
22 the terms of the acquisition, for which Uber could 09:35:12
23 walk away is if they were substantially restricted 09:35:16
24 from using Ottomotto's IP; right? 09:35:19

25 A. Yes. I see that here. 09:35:28

1 Q. Do you have an understanding of what IP 09:35:31
2 Ottomotto developed in the few months that it existed? 09:35:35
3 A. I do not. 09:35:40
4 Q. Well, that's what you're purchasing it for; 09:35:44
5 right? 09:35:45
6 MR. BRILLE: Objection as to form. 09:35:48
7 THE WITNESS: I had already conveyed that my 09:35:50
8 interpretation of the primary motivation for the deal 09:35:53
9 was to get the talented people. 09:35:58
10 BY MR. VERHOEVEN: 09:35:58
11 Q. It wasn't to get any IP? 09:36:00
12 MR. BRILLE: Same objection. 09:36:05
13 MR. FLUMENBAUM: He just objected as to form. You 09:36:07
14 may answer. 09:36:08
15 THE WITNESS: It wasn't -- in my recollection of 09:36:11
16 the board meeting and how this was presented, that was 09:36:14
17 not listed as one of the primary reasons. And just to 09:36:21
18 help shed more light on that, you know, acqui-hires 09:36:24
19 are common occurrences in Silicon Valley. 09:36:28
20 BY MR. VERHOEVEN: 09:36:28
21 Q. Well, if it wasn't important, then why was it 09:36:31
22 listed as one of three conditions under which Uber 09:36:34
23 could walk away from this entire transaction? 09:36:38
24 MR. BRILLE: Objection; form. 09:36:42
25 THE WITNESS: My own interpretation is that you 09:36:45

1 could have walkaway rights that aren't necessarily 09:36:48
2 tied to something being most critically important. 09:36:52
3 You just may want to protect against that situation. 09:36:56
4 BY MR. VERHOEVEN: 09:36:56
5 Q. Isn't that saying that if -- didn't you 09:36:57
6 understand that this was saying that, under the 09:37:00
7 acquisition agreement, if Google sues Ottomotto and 09:37:06
8 succeeds in restricting Ottomotto's use of IP, that 09:37:13
9 would be one of three bases here under which Uber 09:37:16
10 could walk away from the transaction? 09:37:19
11 MR. FLUMENBAUM: Objection as to form. 09:37:26
12 THE WITNESS: As some of the employees were from 09:37:27
13 there in this list of former employer, yes, I would 09:37:31
14 agree with that. 09:37:33
15 BY MR. VERHOEVEN: 09:37:33
16 Q. If you look below the dotted line, you see 09:37:59
17 where it says, "Diligence employees commit 09:38:03
18 post-signing bad acts (specific list of factual 09:38:08
19 actions)." 09:38:11
20 And it has an asterisk that says, "See 09:38:13
21 appendix for summary of diligence process." 09:38:18
22 Do you see that? 09:38:19
23 A. I do. 09:38:20
24 Q. What's that referring to? 09:38:24
25 A. I actually don't know. 09:38:29

1 Q. Have you ever seen a deal that referred to, 09:38:32
2 quote-unquote, bad acts? 09:38:35

3 A. That is not a phrase I'm familiar with other 09:38:38
4 than here. 09:38:39

5 Q. Were you surprised that that was on this 09:38:41
6 slide? 09:38:42

7 A. One thing that we haven't discussed, which is 09:38:53
8 on the previous slide, is the windowing concept of 09:38:57
9 this transaction. So my interpretation of that at the 09:39:01
10 time was that if people did bad things in that window, 09:39:05
11 that we would have a right to remove indemnification. 09:39:12

12 Q. What things would those be? 09:39:18

13 A. I don't have this list, so I don't know. I 09:39:21
14 think one could assume it would be things that would 09:39:23
15 make you not want to indemnify. 09:39:26

16 Q. You understood that that was referring to 09:39:30
17 misappropriation of trade secrets; right? 09:39:34

18 A. I don't. Once again, I don't have that list, 09:39:38
19 so I don't know. 09:39:40

20 Q. If you look over on the right of this page, 09:39:53
21 under the heading, "Do We Still Indemnify?" -- 09:39:55
22 Do you see that? 09:40:01

23 A. Yes. 09:40:02

24 Q. -- the first bullet says, "Yes, for 09:40:04
25 diligenced employees in Ottomotto (relating to actions 09:40:09

1 of diligenced employees) for the following claims." 09:40:13

2 And the first claim listed is, "IP/trade secret 09:40:19

3 misappropriation or infringement." 09:40:22

4 So does that refresh your recollection that 09:40:28

5 the indemnification they're talking about was for 09:40:32

6 trade secret misappropriation? 09:40:35

7 (Witness reviews document.) 09:40:51

8 A. My recollection, once again, about the entire 09:40:54

9 indemnity issue was that the reason that the company 09:40:59

10 was encouraged -- the board was encouraged to be 09:41:04

11 comfortable with these types of terms was tied to the 09:41:10

12 fact that there had been diligence done and it was 09:41:13

13 clean. 09:41:13

14 Q. But you understood, at the time that you 09:41:16

15 approved the deal, that the indemnity provisions as 09:41:23

16 part of the deal indemnified these employees, these 09:41:28

17 diligenced employees, for claims of trade secret 09:41:31

18 misappropriation; correct? 09:41:33

19 A. I think, for the diligenced employees, yes, 09:41:40

20 that's what this says. 09:41:41

21 Q. Did it seem unusual that the purchaser of 09:41:46

22 this transaction would be indemnifying these employees 09:41:50

23 for past trade secret misappropriation? 09:41:56

24 MR. BRILLE: Objection; form. 09:42:02

25 THE WITNESS: I don't want to sound intentionally 09:42:05

1 redundant, but my response to that is that this was 09:42:10
2 discussed. And it was discussed because we were 09:42:20
3 taking on this obligation, as you're describing it, 09:42:26
4 and that the reason the -- we needed to do it was it 09:42:31
5 was important to the team that was selling, and the 09:42:34
6 reason that the board should be comfortable with it 09:42:37
7 was because of the diligence process. 09:42:40

8 BY MR. VERHOEVEN: 09:42:40

9 Q. Did you have a concern about it? 09:42:42

10 A. Very likely that I asked questions about it, 09:43:02
11 which would take me right back to what I just conveyed 09:43:05
12 to you. 09:43:06

13 Q. Well, what do you remember saying? 09:43:08

14 A. I don't remember any specifics. 09:43:11

15 Q. Well, generally, did you say, what's up with 09:43:14
16 this? Did you inquire about it? 09:43:17

17 A. It's highly possible that I did, which led to 09:43:22
18 the conversation that I've already described. 09:43:24

19 Q. So is it fair to say that you were concerned 09:43:25
20 about it? 09:43:26

21 MR. FLUMENBAUM: Objection as to form. 09:43:30

22 You may answer. 09:43:32

23 THE WITNESS: I think it's highly possible I 09:43:34
24 inquired about it. And I would be inquiring about it 09:43:37
25 to make sure that we weren't taking on some 09:43:40

1 unnecessary liability or obligation. And, once again, 09:43:45
2 the reason that was given and the reason that the 09:43:49
3 board approved the deal, despite this, relates to that 09:43:54
4 discussion of -- 09:43:55

5 BY MR. VERHOEVEN:

6 Q. I'm just asking -- 09:43:57

7 MR. FLUMENBAUM: You're interrupting. I don't 09:43:58
8 believe Judge Alsup would approve of that. 09:44:08

9 Finish your answer, please.

10 THE WITNESS: -- that discussion about the 09:44:09
11 diligence process. 09:44:11

12 BY MR. VERHOEVEN: 09:44:11

13 Q. I'm just asking if you were concerned about 09:44:13
14 it at the meeting. 09:44:14

15 MR. FLUMENBAUM: Asked and answered. 09:44:15

16 THE WITNESS: I don't have a specific recollection 09:44:16
17 of whether I was concerned. It was an issue that was 09:44:21
18 discussed. It's highly probable that I brought that 09:44:25
19 up because that's something I would ask about. And I 09:44:30
20 already told you how we discussed it and what the 09:44:34
21 response was. 09:44:34

22 BY MR. VERHOEVEN: 09:44:34

23 Q. It was highly unusual, wouldn't you agree, 09:44:39
24 for a buyer in an acquisition agreement to indemnify 09:44:42
25 employees from the seller for past acts of trade 09:44:50

1 secret misappropriation? 09:44:52

2 MR. FLUMENBAUM: Objection as to form. 09:44:56

3 THE WITNESS: I don't have a universal sample to 09:45:00

4 know whether that's highly unusual or not. Like I 09:45:03

5 said, there are slides dedicated to it, so it was a 09:45:05

6 topic of discussion. And I already told you how it 09:45:09

7 was discussed and what the rationale was for 09:45:13

8 supporting it. 09:45:14

9 BY MR. VERHOEVEN: 09:45:14

10 Q. Have you ever been in a 09:45:15

11 transaction -- withdrawn. 09:45:18

12 Can you name any transaction that you've been 09:45:21

13 involved in, other than this one, which had a 09:45:23

14 provision that indemnified employees of the seller for 09:45:30

15 past trade secret misappropriation? 09:45:32

16 A. I don't have a specific recollection of one, 09:45:35

17 no. 09:45:35

18 Q. On its face, that doesn't make sense, does 09:45:40

19 it? 09:45:40

20 MR. FLUMENBAUM: Objection as to form. 09:45:41

21 MR. BRILLE: Yeah. 09:45:42

22 MR. FLUMENBAUM: Please reword that question. 09:45:44

23 BY MR. VERHOEVEN: 09:45:44

24 Q. On its face, that doesn't make sense, does 09:45:47

25 it? 09:45:47

1 MR. FLUMENBAUM: Objection as to form. 09:45:48

2 MR. BRILLE: Same. 09:45:51

3 THE WITNESS: If -- I can answer, but I'm just 09:45:55

4 going to be -- 09:45:56

5 MR. FLUMENBAUM: Repeat it again. 09:45:58

6 THE WITNESS: It came up. It was listed as a 09:46:02

7 requirement of the -- it was discussed as a 09:46:05

8 requirement of the sellers to get the deal done. And 09:46:08

9 so we discussed it and whether or not it would -- it 09:46:11

10 would result in an unusually large liability or 09:46:17

11 obligations. And the reason that the board was told 09:46:22

12 that this was not a big deal was because of the due 09:46:25

13 diligence process. 09:46:26

14 BY MR. VERHOEVEN: 09:46:26

15 Q. So a requirement of the deal getting done, 09:46:31

16 requirement that Ottomotto insisted on of the deal 09:46:34

17 getting done, is that Uber would indemnify these 09:46:39

18 diligenced employees for future lawsuits for 09:46:43

19 misappropriation of trade secrets? 09:46:45

20 A. That's my best recollection of . . . 09:46:49

21 Q. Have you ever heard of that being a 09:46:50

22 requirement in any other acquisition? 09:46:53

23 A. I don't have specific knowledge or 09:46:58

24 remembrance of any other. 09:47:00

25 Q. Did you ask why that was a requirement? 09:47:03

1 MR. FLUMENBAUM: Objection; form. 09:47:06

2 THE WITNESS: I don't remember if that particular 09:47:09

3 topic was discussed. 09:47:11

4 BY MR. VERHOEVEN: 09:47:11

5 Q. Did it concern you that Ottomotto was 09:47:19

6 insisting on this specific indemnification as a 09:47:23

7 requirement for them being purchased? 09:47:26

8 MR. BRILLE: Objection; form. 09:47:31

9 THE WITNESS: It certainly provoked questions, 09:47:32

10 which we've discussed. 09:47:34

11 BY MR. VERHOEVEN: 09:47:34

12 Q. But you don't recall whether you asked those 09:47:40

13 questions? 09:47:41

14 A. I do not. 09:47:42

15 Q. What were the questions? I know the 09:47:44

16 explanation. 09:47:45

17 What were the questions? 09:47:47

18 MR. FLUMENBAUM: Objection as to form. 09:47:49

19 THE WITNESS: I just don't have specific 09:47:52

20 recollection of specific questions, just a remembrance 09:47:56

21 of the general discussion. 09:47:58

22 BY MR. VERHOEVEN: 09:47:58

23 Q. Was the question asked, what did the due 09:48:01

24 diligence turn up? 09:48:02

25 A. Once again, not remembering specific 09:48:07

1 statements that were made, the general perception I 09:48:10
2 had -- 09:48:11

3 MR. BRILLE: Let me just interject here. 09:48:13

4 Mr. Gurley, in answering that question, I 09:48:16

5 would ask you not to disclose the content or the 09:48:19

6 substance of the due diligence, the results of it or 09:48:22

7 anything else. I will instruct you not to answer 09:48:25

8 that. 09:48:26

9 MR. FLUMENBAUM: If you can answer -- I think 09:48:33

10 you've already said -- 09:48:35

11 THE WITNESS: Yeah, it would be repetitive of 09:48:38

12 something I already said, which was there was -- the 09:48:41

13 board was left with a generic opinion that the due 09:48:46

14 diligence process had been clean and positive. 09:48:49

15 BY MR. VERHOEVEN: 09:48:49

16 Q. And what was that based on? 09:48:50

17 A. It wasn't discussed at the meeting, that I 09:48:55

18 recall. 09:48:55

19 Q. So you're convinced the whole board was left 09:49:01

20 with the impression that it was clean? 09:49:04

21 A. That's my impression, yes. 09:49:06

22 Q. Without discussing it? 09:49:07

23 MR. FLUMENBAUM: Objection; form. 09:49:11

24 THE WITNESS: I didn't say it wasn't discussed. I 09:49:14

25 said it was discussed. 09:49:15

1 BY MR. VERHOEVEN: 09:49:15

2 Q. Okay. So what was discussed about the 09:49:16

3 results of the due diligence? 09:49:18

4 MR. BRILLE: Objection. Instruct not to answer. 09:49:20

5 How many times are you going to ask this and 09:49:23

6 make us instruct? 09:49:24

7 MR. VERHOEVEN: We'll move. Mr. Gurley will have 09:49:36

8 to come back. 09:49:38

9 BY MR. VERHOEVEN: 09:49:38

10 Q. Go to the page 875. 09:49:52

11 Do you see here there's the appendix about 09:49:58

12 the detailed indemnity summary? 09:50:01

13 A. Yes. 09:50:03

14 Q. So you knew at this time that there had been 09:50:12

15 this due diligence investigation; right? 09:50:15

16 A. Yes. 09:50:19

17 Q. The third-party forensic expert performed due 09:50:25

18 diligence on Mr. Levandowski and four other employees; 09:50:30

19 right? 09:50:30

20 A. You're reading the first bullet? 09:50:35

21 Q. Yes. 09:50:36

22 A. Yes. 09:50:37

23 Q. What was your understanding of the meaning of 09:50:42

24 "forensic expert"? 09:50:43

25 A. I didn't have one. Other than how you would 09:50:53

1 just interpret this sentence here. There was no 09:50:56
2 further explanation, that I recall. 09:51:00
3 Q. Did you know what a forensic expert was, 09:51:04
4 generally? 09:51:05
5 A. That phrase creates a general concept in my 09:51:14
6 brain. 09:51:15
7 Q. And what would that be? 09:51:17
8 A. Someone who's experienced at determining 09:51:20
9 detailed investigative results. 09:51:32
10 Q. Would it be fair that you interpreted this to 09:51:34
11 being that the expert would have looked at 09:51:37
12 Mr. Levandowski's computer files? 09:51:43
13 A. As I already mentioned, I don't have any 09:51:46
14 recollection of the diligence process being discussed 09:51:51
15 in detail at the meeting. So anything I -- that I 09:51:56
16 would speculate would be solely from my own 09:52:00
17 interpretation of reading the deck, at that moment in 09:52:05
18 time. 09:52:05
19 Q. At that moment in time, did you interpret the 09:52:08
20 first bullet here to be saying that a third-party 09:52:15
21 forensic expert had looked to see if there was any 09:52:20
22 trade secret misappropriation by Anthony? 09:52:23
23 MR. BRILLE: Objection to form. 09:52:28
24 THE WITNESS: I would have assumed that to be part 09:52:34
25 of the process, but once again, the details of the 09:52:38

1 process weren't discussed at that meeting. 09:52:41

2 BY MR. VERHOEVEN: 09:52:41

3 Q. The next bullet -- or two bullets down, the 09:52:44

4 third bullet down, says, "Uber received report from 09:52:48

5 both forensic expert and outside counsel." 09:52:51

6 Do you see that? 09:52:52

7 A. Yes. 09:52:53

8 Q. What was the report that's being referred to 09:52:56

9 there? 09:52:57

10 MR. FLUMENBAUM: Just limit your answer to what 09:53:02

11 was done at the board meeting and not what you may 09:53:06

12 have heard from counsel afterwards. 09:53:08

13 THE WITNESS: At that moment in time, I didn't 09:53:11

14 know the specifics of this such report. 09:53:16

15 BY MR. VERHOEVEN: 09:53:16

16 Q. Did you ask to see the report? 09:53:18

17 A. Did not. 09:53:20

18 Q. Why not? 09:53:21

19 A. Once again, we were relying on the assertion 09:53:29

20 that was made to the board that the diligence effort 09:53:33

21 had been positive. 09:53:35

22 Q. And who made that assertion? 09:53:37

23 A. My recollection is it was Mr. Kalanick. 09:53:39

24 There's some chance that it was one of the deal -- one 09:53:46

25 of the executives that worked on the deal, like 09:53:48

1 Cameron. 09:53:49

2 Q. The next bullet says, "Based on our review of 09:53:52

3 facts, Uber decided to move forward with signing of 09:53:55

4 the put-call agreement." 09:53:56

5 Do you see that? 09:53:58

6 A. Yes. 09:53:58

7 Q. Is it fair that -- that whoever it was who 09:54:04

8 was speaking on this slide was saying -- was that they 09:54:10

9 had to complete this diligence report before Uber 09:54:13

10 could decide whether to move forward or not? 09:54:16

11 MR. BRILLE: Objection to form. 09:54:19

12 THE WITNESS: Ask that again. I'm not sure I 09:54:25

13 understand the question. 09:54:26

14 BY MR. VERHOEVEN: 09:54:26

15 Q. So was it your understanding that getting the 09:54:31

16 results of the diligence report and reviewing those 09:54:35

17 was a requirement before Uber would move forward and 09:54:38

18 sign the put-call agreement? 09:54:41

19 MR. BRILLE: Object to form. 09:54:43

20 MR. FLUMENBAUM: Object to form as well. 09:54:44

21 THE WITNESS: I didn't have that specific point of 09:54:51

22 view. 09:54:53

23 BY MR. VERHOEVEN: 09:54:53

24 Q. How did you interpret that phrase, "Based on 09:54:55

25 our review of the facts, Uber decided to move 09:54:58

1 forward"? 09:54:59

2 A. Once again, consistent with what I said many 09:55:02

3 times, to me that says, and it was consistent with the 09:55:05

4 discussion and disclosure at the meeting, that the due 09:55:11

5 diligence effort had been clean and that, as a result, 09:55:14

6 we were comfortable moving forward. 09:55:18

7 Q. Okay. So as a result of it being clean, then 09:55:22

8 Uber was comfortable moving forward? 09:55:25

9 A. That was my -- that's my recollection. 09:55:27

10 Q. So all I'm saying is that was a requirement 09:55:29

11 for Uber to move forward; right? 09:55:33

12 MR. BRILLE: Object to form. 09:55:34

13 MR. FLUMENBAUM: Object to form. 09:55:38

14 MR. VERHOEVEN: You can only -- we've already 09:55:40

15 agreed -- 09:55:41

16 MR. FLUMENBAUM: We were talking at the same time. 09:55:43

17 MR. BRILLE: We're trying our best. 09:55:45

18 THE WITNESS: Yeah, I'm not sure of the exact 09:55:49

19 wordsmith -- I'm not sure what you're trying to get at 09:55:52

20 that I'm not answering, but I'm open to try it again. 09:55:57

21 MR. FLUMENBAUM: Can I suggest something to you, 09:56:02

22 Mr. -- 09:56:02

23 MR. VERHOEVEN: Let's just move on. 09:56:04

24 MR. FLUMENBAUM: Okay. 09:56:04

25 BY MR. VERHOEVEN: 09:56:04

1 Q. Under the same page, on the right-hand side, 09:56:38
2 under the heading, "Exclusions from Indemnity," do you 09:56:42
3 see that? 09:56:43
4 A. Yes. 09:56:43
5 Q. The first bullet says, "If diligenced 09:56:47
6 employees lie during forensic due diligence process 09:56:52
7 and it's discovered later, employees will not receive 09:56:56
8 indemnity for claims based on those untruthful acts." 09:57:00
9 MR. BRILLE: Objection, you read that incorrectly. 09:57:05
10 BY MR. VERHOEVEN: 09:57:05
11 Q. "Facts." 09:57:05
12 Well, you can read it. Have you read it? 09:57:08
13 A. I have. 09:57:08
14 Q. Okay. What's that a reference to? 09:57:11
15 A. I don't know if that particular bullet point 09:57:19
16 was discussed in the meeting, so it's purely my 09:57:22
17 interpretation of reading it. But it suggests that if 09:57:27
18 the people who had gone through the diligence process, 09:57:31
19 it's later found out, were untruthful during that 09:57:34
20 process, that they will lose the indemnity. 09:57:40
21 Q. And then the second bullet says, "If 09:57:42
22 diligenced employees commit any post-signing bad 09:57:46
23 acts," per a specific list. 09:57:49
24 Do you see that? 09:57:49
25 A. Yes. 09:57:49

1 Q. And that's the same bad acts we talked about 09:57:52
2 before? 09:57:53
3 A. I would presume, based on the fact that it 09:57:55
4 was mentioned in the slide before. 09:57:58
5 Q. Did you understand that the due diligence 09:58:00
6 that the forensic expert was looking for included 09:58:05
7 pre-signing bad acts, as we've been using that term? 09:58:10
8 A. Not at the moment in time that this deal was 09:58:17
9 approved. 09:58:17
10 Q. What was your understanding of what the 09:58:22
11 subject of the due diligence was then? 09:58:29
12 MR. FLUMENBAUM: Again, focused on the board 09:58:31
13 meeting. 09:58:33
14 THE WITNESS: Consistent with what I said before, 09:58:35
15 it was only discussed generically at the meeting. 09:58:40
16 BY MR. VERHOEVEN: 09:58:40
17 Q. So you didn't know? 09:58:44
18 MR. FLUMENBAUM: Objection as to form. 09:58:53
19 THE WITNESS: I would just state that we 09:58:55
20 had -- this is a rather large company that had done 09:58:58
21 numerous transactions and had a large deal team and a 09:59:02
22 large legal team and external lawyers involved. And I 09:59:07
23 think it was -- it would be a safe presumption that 09:59:11
24 the details of that effort were done in an appropriate 09:59:17
25 way, as the board would interpret any discussion about 09:59:22

1 a particular action within the development team or the 09:59:26
2 marketing team or anything else. 09:59:28

3 BY MR. VERHOEVEN: 09:59:28

4 Q. So just to close the loop, did you have an 09:59:56
5 understanding at the meeting of what the subject of 09:59:58
6 the due diligence was? 10:00:01

7 A. Not a specific one, no. 10:00:03

8 Q. Okay. Do you remember anything else that was 10:00:29
9 discussed about the acquisition at the board meeting? 10:00:32

10 A. Yes. There was quite a bit of discussion 10:00:40
11 about the form of the -- of how the . . . there's a 10:00:58
12 lot of discussion about the fact that the cost of the 10:01:00
13 transaction was tied specifically to milestones. 10:01:05
14 There's quite a bit of discussion about that topic. 10:01:11

15 Q. What do you recall -- can you tell me 10:01:15
16 generally what was discussed on this -- 10:01:18

17 A. Sure. So when you're entering into a 10:01:21
18 transaction that has a headline valuation number 10:01:25
19 that's large, as this one does, and a rather 10:01:30
20 early-stage company, that provokes questions. And so 10:01:35
21 there was a lot of discussion about, you know, does it 10:01:39
22 really make sense -- even though there have since been 10:01:44
23 acqui-hires like -- in the autonomous space, like GM 10:01:47
24 paid a billion for Cruze. But despite that, there 10:01:50
25 were a lot of discussion about whether it really made 10:01:54

1 sense to spend this amount of money for such an 10:01:58
2 early-stage company. 10:01:59
3 And the rationale that was provided to the 10:02:01
4 board was that the majority of the value was tied to 10:02:06
5 milestones. And so if -- if the team failed to hit 10:02:11
6 those milestones way into the future, then there would 10:02:16
7 actually be no cost or minimal cost to the 10:02:19
8 organization -- to Uber. 10:02:20
9 Q. Did you review the milestones? 10:02:24
10 A. I do believe we did a cursory review of the 10:02:31
11 milestones. That's my best recollection. 10:02:34
12 Q. Do you remember that they were highly 10:02:37
13 aggressive? 10:02:39
14 A. There was a discussion that if we hit those 10:02:43
15 milestones, it would be such a positive outcome, that 10:02:45
16 the cost of the transaction would look like it was 10:02:51
17 cheap rather than expensive because that would be so 10:02:54
18 good for the company if those were achieved. 10:02:57
19 Q. Did anyone at the meeting express the concern 10:03:00
20 that the milestones weren't realistic? 10:03:03
21 A. I expressed concern about milestone deals in 10:03:08
22 general. 10:03:09
23 Q. What did you say? 10:03:10
24 A. Just that it's been my experience that in -- 10:03:12
25 with other companies, that when you have a large group 10:03:17

1 of employees where all of their compensation is tied 10:03:21
2 to specific targets, that it's hard to get them to 10:03:24
3 focus on the objectives of the overall organization 10:03:28
4 because they get so distracted and only care about 10:03:31
5 that, and that it leads to dysfunction down the road. 10:03:36
6 And I have a specific recollection of making that 10:03:37
7 point. 10:03:38
8 Q. Was there any discussion of whether the 10:03:41
9 milestones were achievable in reality? 10:03:44
10 A. It's possible. I don't have specific 10:03:55
11 recollection of that. 10:03:56
12 Q. Do you recall anyone being concerned that the 10:03:58
13 timetable in the milestones was not realistic? 10:04:03
14 A. Actually, I do have one thing. I made 10:04:06
15 specific comments that the profitability assumptions 10:04:10
16 in the trucking deal were not realistic. I made that 10:04:16
17 point. 10:04:17
18 Q. Okay. And you made that to Mr. Kalanick or 10:04:21
19 to the board generally? 10:04:23
20 A. I think to the board generally and certainly 10:04:26
21 at other points in time to others. 10:04:28
22 Q. Did you get a response to that statement at 10:04:35
23 the board meeting? 10:04:37
24 A. The response that I heard was that the team 10:04:42
25 members of the trucking deal, you know, had confidence 10:04:46

1 in them and that if they wanted to value those as 10:04:51
2 realistic, that that was their prerogative. 10:04:55

3 Q. They took the risk? 10:04:56

4 A. Yeah. 10:04:56

5 Q. Did that satisfy you? Or did you still have 10:05:04
6 a concern? 10:05:06

7 A. Both with regard to the Otto Trucking 10:05:20
8 milestones and with regard to generic milestone deals, 10:05:25
9 that's a general perception of mine. So I still had a 10:05:28
10 concern, which I raised. 10:05:33

11 Q. I'm going to hand -- well, before I do that, 10:05:38
12 anything else that you remembered being discussed at 10:05:41
13 the board meeting concerning acquisition? 10:05:45

14 A. No. 10:05:45

15 MR. VERHOEVEN: I'm going to mark as Exhibit 911 10:06:02
16 some highly redacted minutes of special meeting of 10:06:06
17 board of directors, Uber Technologies, Inc., dated 10:06:11
18 April 11th, 2016. 10:06:13

19 (Plaintiff's Exhibit 911 was marked.) 10:06:23

20 MR. BOOCK: Counsel, during a break -- during a 10:06:29
21 break, could you have a copy for Otto Trucking made of 10:06:33
22 the prior exhibit? You're not passing any exhibits 10:06:38
23 down. 10:06:38

24 MR. VERHOEVEN: I'm sorry. I didn't know there 10:06:39
25 were going to be however many people are here. This 10:06:39

1 is MoFo's offices. I think maybe they could make a 10:06:44
2 copy for you. 10:06:46
3 BY MR. VERHOEVEN: 10:06:46
4 Q. Do you recognize this document? 10:06:49
5 First of all, I'll represent to you that 10:06:52
6 these big blank spaces that say "redacted" were 10:06:57
7 blocked out by counsel for Uber -- 10:07:01
8 A. Okay. 10:07:03
9 Q. -- not by us. 10:07:05
10 A. Okay. Thank you. 10:07:07
11 Q. So do you recognize this document? 10:07:09
12 A. Yes. 10:07:10
13 Q. What is it? 10:07:11
14 A. It's minutes for the board meeting that we 10:07:15
15 just discussed. 10:07:16
16 MR. VERHOEVEN: All right. That's all I have on 10:07:35
17 that. 10:07:35
18 How long have we been going? Does anyone 10:07:42
19 need a break? 10:07:43
20 MR. FLUMENBAUM: Do you want to take a short 10:07:45
21 break? We can take a short break. 10:07:47
22 MR. VERHOEVEN: I'm switching subjects. 10:07:49
23 MR. FLUMENBAUM: Let's take a five-minute break. 10:07:53
24 THE VIDEOGRAPHER: This marks the end of DVD No. 1 10:07:56
25 in the deposition of William Gurley. We're off the 10:07:59

1 record at 10:07 a.m. 10:08:04

2 (Recess taken.) 10:08:04

3 THE VIDEOGRAPHER: Back on the record. This is 10:21:54

4 the beginning of DVD No. 2, and the time is 10:21 a.m. 10:21:59

5 BY MR. VERHOEVEN: 10:21:59

6 Q. Mr. Gurley, when did you learn of the 10:22:03

7 allegations in the complaint filed by Waymo in 10:22:07

8 District Court in California? 10:22:08

9 A. I don't have any recollection of knowing 10:22:16

10 about it prior to it being a public event. 10:22:21

11 Q. So you learned about it from the press? 10:22:24

12 A. It's my recollection. There's a chance we 10:22:27

13 were notified as a board earlier, but I don't have 10:22:30

14 recollection of that. 10:22:31

15 Q. Did you know that this might happen? 10:22:35

16 A. I suppose. I mean, anybody can sue anybody, 10:22:49

17 so I guess there's a knowledge that it could happen, 10:22:52

18 but I wasn't anticipating it happening. 10:22:55

19 Q. Did you read the complaint? 10:23:03

20 A. I don't think I read the detailed complaint. 10:23:07

21 Q. Did you learn what the allegations were? 10:23:10

22 MR. FLUMENBAUM: Objection. 10:23:11

23 And if you learned it from talking to 10:23:14

24 counsel -- 10:23:16

25 THE WITNESS: Right. 10:23:18

Page 75

1 MR. FLUMENBAUM: -- just say that you can't answer 10:23:20
2 that question. 10:23:21

3 MR. VERHOEVEN: Can we have a yes or no and then 10:23:23
4 he can answer if he learned it from counsel, so I know 10:23:26
5 if he learned about it in the first place? 10:23:29

6 MR. BRILLE: Yes. 10:23:31

7 BY MR. VERHOEVEN: 10:23:31

8 Q. Did you learn about the allegations of the 10:23:34
9 complaint? 10:23:35

10 A. Yes. 10:23:35

11 Q. And when was that? 10:23:36

12 A. To the best of my recollection, around the 10:23:39
13 time that it was filed and went public. 10:23:42

14 Q. And what was your understanding of those 10:23:44
15 allegations? 10:23:45

16 MR. FLUMENBAUM: Do you have any understanding 10:23:46
17 other than through counsel? 10:23:47

18 THE WITNESS: From what I've read in the press. 10:23:50

19 MR. FLUMENBAUM: You want him to answer based on 10:23:55
20 his knowledge through the press? 10:23:57

21 MR. VERHOEVEN: I want him to answer the question, 10:24:00
22 if he can. 10:24:01

23 THE WITNESS: Based on my knowledge from reading 10:24:02
24 articles in the press, there were claims of trade 10:24:07
25 secret theft and solicitation of employees and 10:24:14

1 specific accusations related to the downloading of the 10:24:20
2 14,000 or so files. 10:24:23
3 BY MR. VERHOEVEN: 10:24:23
4 Q. Did you speak with anyone at Uber about the 10:24:27
5 veracity of that allegation about the 14,000 files 10:24:30
6 being downloaded? 10:24:32
7 MR. FLUMENBAUM: Can he answer yes? 10:24:35
8 MR. BRILLE: He can answer yes, and then we'll 10:24:37
9 take it a step at a time. Or no, as the case may be. 10:24:45
10 THE WITNESS: When the company the size of Google 10:24:49
11 sues one of the companies you're on the board of, I'm 10:24:52
12 100 percent certain that discussions ensued. I don't 10:24:55
13 have specific recollection of -- a detailed 10:24:59
14 recollection of a specific discussion. I'm sure there 10:25:05
15 were many. 10:25:06
16 BY MR. VERHOEVEN: 10:25:06
17 Q. Did you discuss it with any nonlawyers, such 10:25:08
18 as perhaps, Mr. Kalanick? 10:25:11
19 A. I don't recall having a specific one-on-one 10:25:14
20 conversation with Travis about this topic. 10:25:20
21 Q. Do you remember any discussions you had where 10:25:22
22 there weren't lawyers in the room? 10:25:25
23 A. Not specifically. 10:25:26
24 Q. So you can't say one way or another whether 10:25:31
25 you had any conversations with -- 10:25:33

1 A. I think it's highly likely. I just don't 10:25:36
2 recall the details of any specific conversation. 10:25:39
3 Q. Tell me about what you recall about these 10:25:41
4 conversations. 10:25:42
5 MR. FLUMENBAUM: Again, exclude anything that -- 10:25:47
6 THE WITNESS: With a lawyer. 10:25:49
7 MR. FLUMENBAUM: -- you had with counsel. 10:25:50
8 BY MR. VERHOEVEN: 10:25:50
9 Q. So the question is: Did you ask Travis or 10:25:54
10 anybody else at Uber about the veracity of the 10:25:58
11 allegations concerning Levandowski's downloading of 10:26:03
12 the 14,000 files? 10:26:04
13 A. There were numerous discussions that involved 10:26:07
14 company counsel, external counsel that I presume are 10:26:12
15 privileged, numerous. What I'm struggling to 10:26:16
16 recollect is if I had conversations with nonattorneys 10:26:20
17 about what you're asking, and I don't have specific 10:26:25
18 recollection. 10:26:26
19 Q. Well, did you have any conversations -- 10:26:31
20 A. Highly likely. 10:26:32
21 Q. Well, what do you remember saying in those 10:26:35
22 circumstances? 10:26:37
23 MR. FLUMENBAUM: Again, limit your answer to 10:26:39
24 conversations where counsel was not present, to the 10:26:42
25 extent you can remember those. 10:26:44

1 THE WITNESS: I'd be reaching. I don't have 10:26:48
2 specific recollection of -- it's highly likely it 10:26:54
3 happened because it's such a critical and meaningful 10:26:57
4 event. The substantive conversations are much more 10:27:01
5 likely to have been with the attorneys because of the 10:27:04
6 nature of the event. 10:27:05
7 BY MR. VERHOEVEN: 10:27:05
8 Q. So you're saying the only conversations you 10:27:07
9 can recall are with attorneys? 10:27:09
10 A. Yes. 10:27:09
11 Q. But you would agree that the filing of the 10:27:25
12 complaint was a highly critical event; right? 10:27:35
13 A. Yes. 10:27:35
14 Q. When did you learn -- let me back up. 10:27:47
15 Did there come a point when you learned that 10:27:52
16 Mr. Levandowski was asserting the Fifth Amendment? 10:27:55
17 A. Yes. 10:27:55
18 Q. And when did you learn that? 10:27:59
19 A. I don't have any recollection of knowing that 10:28:07
20 ahead of it being general public knowledge. 10:28:10
21 Q. Did you learn it from the press then? 10:28:13
22 A. It's possible. 10:28:14
23 Q. What was your reaction to that? 10:28:18
24 A. It -- it's not a topic that I had much 10:28:28
25 familiarity with, so my reaction was to try to find 10:28:32

1 out whether it was common or not and why it was 10:28:34

2 happening and, you know, what the company's response 10:28:39

3 should be. 10:28:40

4 Q. So you weren't concerned when you read it? 10:28:43

5 A. I didn't say that. 10:28:44

6 Q. Were you concerned when you read it? 10:28:47

7 A. I was unaware of how to react to it, and so I 10:28:53

8 sought knowledge to have a broader understanding of 10:28:56

9 it. 10:28:57

10 Q. You know generally what taking the Fifth is; 10:29:01

11 right? 10:29:01

12 A. Yeah, but I didn't have a prior knowledge as 10:29:05

13 to what it meant in this situation. But then I sought 10:29:10

14 that out. 10:29:11

15 Q. Well, you knew when you take the Fifth, 10:29:13

16 you're refusing to answer questions -- 10:29:15

17 A. I understand. 10:29:16

18 Q. -- on the ground that you might incriminate 10:29:19

19 yourself; right? 10:29:21

20 A. I understand. 10:29:22

21 Q. And you knew that at the time? 10:29:23

22 A. I did. I didn't have a -- I didn't have a 10:29:27

23 full understanding of the -- how unusual -- I didn't 10:29:34

24 have an understanding in that context, but then I did 10:29:37

25 shortly thereafter. 10:29:38

HIGHLY CONFIDENTIAL - ATTORNEYS EYES ONLY

1 Q. And were you concerned about it? 10:29:40

2 A. Yes. 10:29:40

3 Q. Did you do anything about it? 10:29:45

4 A. I asked a lot of questions about him doing 10:29:51

5 that and what the proper response from the company 10:29:54

6 should be. 10:29:56

7 Q. And what response did you get from the 10:29:58

8 company? 10:29:59

9 MR. BRILLE: Objection. 10:29:59

10 I'm going to instruct the witness that to the 10:30:02

11 extent it would call for you to disclose 10:30:05

12 attorney-client privilege communications, that you 10:30:07

13 exclude those from your answer. 10:30:09

14 MR. BOOCK: And I would agree that Otto Trucking 10:30:09

15 joins in all of Uber and Otto's objections.

16 MR. FLUMENBAUM: Can you answer that question 10:30:19

17 without divulging conversations that you had with 10:30:22

18 counsel for Uber? 10:30:25

19 THE WITNESS: So as I attempted to understand the 10:30:33

20 situation more broadly and talked to our own 10:30:40

21 counsel -- 10:30:43

22 MR. FLUMENBAUM: You can't talk about your own 10:30:45

23 counsel, conversations with your own counsel. 10:30:48

24 THE WITNESS: At any rate, I came to believe that 10:30:51

25 the appropriate action in a situation like this would 10:30:54

1 be for the company to terminate based on taking the 10:30:57
2 Fifth. 10:30:59
3 BY MR. VERHOEVEN: 10:30:59
4 Q. Okay. And what was the time -- what was the 10:31:03
5 span of time from when you first read about it in the 10:31:08
6 press to when you came to that conclusion? 10:31:10
7 A. To the best of my recollection, a couple 10:31:17
8 weeks. 10:31:18
9 Q. And did you express that view? 10:31:26
10 A. Yes. 10:31:26
11 Q. To whom? 10:31:30
12 A. There were some conversations with members of 10:31:33
13 the executive team. I don't remember exactly who or 10:31:36
14 when. There's some conversations with legal that are 10:31:40
15 privileged. But I also expressed it to the board. 10:31:45
16 Q. What do you remember about any discussions 10:31:50
17 with the executive team on this subject? 10:31:53
18 A. There were members of the executive team that 10:32:02
19 also agreed that termination was the right course of 10:32:06
20 action. 10:32:06
21 Q. And who were those members? 10:32:08
22 A. I don't recall specifically. I talked to a 10:32:11
23 lot of executive team members. 10:32:13
24 Q. Were there members who did not think that 10:32:16
25 that was the right course of action? 10:32:18

1 A. I don't recall any. 10:32:33

2 Q. Who comprised the executive team at that 10:32:38

3 time? 10:32:38

4 A. I don't know if I'll get them all. I think 10:32:52

5 at that time Emil Michael was still there. Twaun 10:32:56

6 Pham. Rachel Whetstone. Liane Hornsey. Sally Yoo, 10:33:04

7 but Sally's on the legal team. Jeff Holden. Gautam 10:33:13

8 Gupta was still there at that time, I believe. I'm 10:33:26

9 probably leaving somebody out. 10:33:28

10 Q. Was Travis on the team? 10:33:30

11 A. Yeah, I mean, he's CEO, so, yeah. Jeff Jones 10:33:37

12 may have left by then. 10:33:39

13 Q. Did Mr. Kalanick agree, when you expressed 10:33:45

14 this to the executive team, that Mr. Levandowski 10:33:48

15 should be terminated? 10:33:52

16 A. I don't recall if I had a direct discussion 10:33:55

17 with him, although probably at a board level, it was 10:33:58

18 the general understanding of the team that he did not 10:34:04

19 want to terminate Anthony. 10:34:06

20 Q. Do you recall what the reasons -- that he 10:34:17

21 stated for why he did not -- 10:34:19

22 A. Yeah, the statement I remember is that he 10:34:21

23 didn't do anything wrong, so why should we terminate 10:34:24

24 him? 10:34:25

25 Q. And what was said in response to that? And 10:34:32

1 if you can recall, who said it? For example, did 10:34:42
2 someone say, then why is he taking the Fifth? 10:34:45
3 MR. BRILLE: Object to form. 10:34:47
4 THE WITNESS: I can certainly say that my opinion 10:34:53
5 at that moment in time was that his taking the Fifth 10:34:56
6 should result in his termination, based on my best 10:35:02
7 knowledge of how that situation should be dealt with. 10:35:06
8 BY MR. VERHOEVEN: 10:35:06
9 Q. And did -- you referenced conversations with 10:35:10
10 the board on this subject? 10:35:12
11 A. Yes. 10:35:12
12 Q. How many such conversations were there? 10:35:16
13 A. I can't remember specifically, but my general 10:35:21
14 recollection is that it spanned multiple board 10:35:24
15 meetings. 10:35:31
16 Q. And your position to the board was that he 10:35:34
17 should be terminated? 10:35:35
18 A. Yes. 10:35:35
19 Q. And you made that clear on the first of these 10:35:41
20 multiple board meetings? 10:35:43
21 A. Once I'd gotten up to speed and had proper 10:35:48
22 knowledge of what I thought was the best to do, 10:35:55
23 which -- as I said earlier, there was a time window 10:35:58
24 where that happened. So it wasn't -- my voicing of 10:36:06
25 this opinion wasn't immediate, like right after he 10:36:09

1 pled the Fifth. It took me a while to ascertain the 10:36:14
2 right answer for this situation. 10:36:16

3 Q. Did you explain to the board why you thought 10:36:18
4 he should be terminated? 10:36:19

5 A. Yes. 10:36:19

6 Q. What did you say? 10:36:21

7 A. I said, based on all the research I've done, 10:36:25
8 that that's the appropriate action for a company at 10:36:29
9 this moment in time, when someone pleads the Fifth. 10:36:32

10 Q. And when you say "research" that you've done, 10:36:34
11 can you summarize what you did? 10:36:36

12 A. Well, I want to be careful. Some of those 10:36:38
13 conversations were me reaching out to people who were 10:36:41
14 experienced on those matters, which would inherently 10:36:45
15 go to lawyers. 10:36:46

16 Q. Can you identify the lawyers that you 10:36:48
17 consulted? 10:36:49

18 A. Certainly Steve Spurlock, who is a lawyer 10:36:54
19 that works for Benchmark. 10:36:57

20 Q. Any outside counsel? 10:37:01

21 A. He may have reached out. I don't know 10:37:06
22 specifically who he talked to. 10:37:09

23 MR. VERHOEVEN: And I assume, Counsel, you'll 10:37:12
24 instruct if I ask about the substance of his 10:37:15
25 conversation? 10:37:16

1	MR. FLUMENBAUM: Correct.	10:37:18
2	BY MR. VERHOEVEN:	10:37:18
3	Q. Any other things you did to research besides	10:37:25
4	talk to Steve Spurlock?	10:37:33
5	A. Not that I have specific recollection of, but	10:37:35
6	I'm sure I -- I did as much work as I did to come up	10:37:42
7	to that point of view. I just don't remember exactly	10:37:45
8	who I talked to.	10:37:46
9	Q. Did you read the complaint?	10:37:48
10	A. I don't have -- I don't have memory of	10:37:51
11	reading the exact complaint. I may have, but I don't	10:37:55
12	remember.	10:37:55
13	Q. Did you read the motion for preliminary	10:37:57
14	injunction?	10:37:58
15	A. It's possible, but I don't recall precisely.	10:38:03
16	Q. Do you remember reading any legal pleadings	10:38:07
17	that were filed in around the time you were doing your	10:38:10
18	research?	10:38:11
19	A. I certainly made myself aware of the issues.	10:38:23
20	I just don't know if it was precisely by reading the	10:38:27
21	complaint.	10:38:28
22	Q. Did you have an understanding as to why, when	10:38:31
23	someone asserts the Fifth Amendment, you thought they	10:38:34
24	should be terminated?	10:38:36
25	MR. FLUMENBAUM: Objection as to form.	10:38:42

1 BY MR. VERHOEVEN: 10:38:42

2 Q. Let me withdraw that. 10:38:44

3 Did you have an understanding as to the 10:38:45

4 reasons why, in these circumstances here, when 10:38:48

5 Mr. Levandowski asserted the Fifth Amendment, that he 10:38:52

6 should be terminated? 10:38:53

7 A. Yeah, as I understood a couple of things, 10:38:56

8 one, that that was generally considered to be best 10:39:00

9 practice and so that's a reason in and of itself. I 10:39:04

10 believe that he is required to be cooperative as part 10:39:09

11 of indemnity claims and that kind of thing, so this 10:39:16

12 is, by definition, being noncooperative. 10:39:19

13 And there was also -- as I'm sure you're 10:39:34

14 aware, there were assertions by the judge in the case 10:39:37

15 that suggested that he had a strong bias for that 10:39:42

16 action. 10:39:43

17 Q. For what action? 10:39:44

18 A. For terminating. That's my interpretation of 10:39:48

19 it. 10:40:04

20 Q. Did there come a time when you learned that 10:40:06

21 Mr. Levandowski did, indeed, download the 14,000 10:40:11

22 files? 10:40:12

23 MR. BRILLE: Object to the form. 10:40:23

24 THE WITNESS: I don't have any knowledge of that 10:40:25

25 that wouldn't qualify for privileged conversation. 10:40:30

1	BY MR. VERHOEVEN:	10:40:30
2	Q. Well, yes or no?	10:40:32
3	MR. FLUMENBAUM: He's answered your question. I'm	10:40:36
4	going to tell him -- instruct him not to answer on the	10:40:40
5	basis of privilege.	10:40:41
6	BY MR. VERHOEVEN:	10:40:41
7	Q. You had -- you learned something along those	10:40:45
8	lines from counsel; is that what you're saying?	10:40:48
9	MR. FLUMENBAUM: Objection as to form. And I'm	10:40:50
10	going to instruct him not to answer that question on	10:40:53
11	privilege grounds.	10:40:55
12	MR. BRILLE: Same instruction.	10:40:58
13	MR. VERHOEVEN: Just asking him about his state of	10:41:01
14	mind.	10:41:02
15	MR. FLUMENBAUM: Well, you're not doing it	10:41:04
16	appropriately.	10:41:04
17	MR. VERHOEVEN: Okay. Tell me how to do it	10:41:06
18	appropriately.	10:41:07
19	MR. FLUMENBAUM: First of all, you don't have a	10:41:09
20	time frame. You have not excluded conversations with	10:41:12
21	counsel. You have not excluded events that have	10:41:15
22	occurred subsequent, so -- you know.	10:41:19
23	MR. VERHOEVEN: I asked him if there came a time	10:41:21
24	when he learned --	10:41:23
25	MR. FLUMENBAUM: Ask your question.	10:41:24

1 MR. VERHOEVEN: Okay. I'll repeat it. 10:41:26

2 BY MR. VERHOEVEN: 10:41:26

3 Q. Did there come a time, Mr. Gurley, when you 10:41:29

4 learned that Mr. Levandowski, in fact, did download 10:41:33

5 the 14,000 files? 10:41:35

6 MR. BRILLE: Mr. Gurley, in answering that 10:41:37

7 question, I'm going to instruct you not to answer the 10:41:39

8 question if the only way you can answer the question 10:41:42

9 is to divulge the content of attorney-client 10:41:46

10 communications. 10:41:47

11 THE WITNESS: Okay. 10:41:49

12 MR. FLUMENBAUM: Instruction stands. 10:41:51

13 MR. VERHOEVEN: All right. It will go on our 10:41:53

14 motion. Can I ask him what time he learned it? 10:41:57

15 MR. FLUMENBAUM: If he learned it. 10:41:59

16 BY MR. VERHOEVEN: 10:41:59

17 Q. Okay. If you learned it, can you tell me 10:42:02

18 approximately when you learned it? 10:42:04

19 MR. BRILLE: I'm going to object to the form. 10:42:07

20 Same objection -- I'm going to instruct. The question 10:42:10

21 is improper and seeks to elicit attorney-client 10:42:13

22 privileged discussions. The way you're phrasing it is 10:42:16

23 the way it seeks to elicit that type of information. 10:42:19

24 MR. VERHOEVEN: His counsel just suggested that. 10:42:22

25 MR. BRILLE: No, he did not. 10:42:28

HIGHLY CONFIDENTIAL - ATTORNEYS EYES ONLY

1 MR. VERHOEVEN: I thought you said that if he 10:42:29
2 learned it -- 10:42:30
3 MR. FLUMENBAUM: Why don't you start over and -- 10:42:33
4 BY MR. VERHOEVEN:
5 Q. If you learned that Mr. Levandowski did, 10:42:37
6 indeed, download the 14,000 files, when did you learn 10:42:41
7 it? 10:42:41
8 MR. BRILLE: Object to the form of the question 10:42:43
9 instruct the witness not to answer. As phrased, it is 10:42:45
10 designed to elicit attorney-client privileged 10:42:48
11 information. 10:42:49
12 MR. FLUMENBAUM: Correct, I agree with that. 10:42:52
13 MR. VERHOEVEN: The fact of when the board learned 10:42:54
14 about something? 10:42:54
15 MR. BRILLE: As phrased, you are seeking to -- 10:42:58
16 MR. FLUMENBAUM: You are asking questions -- now 10:43:00
17 you're saying the board. That's not part of your 10:43:03
18 question. 10:43:04
19 MR. VERHOEVEN: Okay. 10:43:05
20 MR. FLUMENBAUM: Please start again. 10:43:07
21 BY MR. VERHOEVEN: 10:43:07
22 Q. Did there come a time when the board learned 10:43:10
23 that Mr. Levandowski did, in fact, download the 14,000 10:43:13
24 files? 10:43:14
25 MR. BRILLE: Mr. Gurley, I'm going to give you the 10:43:16

HIGHLY CONFIDENTIAL - ATTORNEYS EYES ONLY

1 same instruction. To the extent you can answer that 10:43:18
2 question without revealing the content of 10:43:20
3 attorney-client privileged communications, you may do 10:43:23
4 so; otherwise, I will instruct you not to answer. 10:43:26
5 BY MR. VERHOEVEN: 10:43:26
6 Q. It's a yes-or-no question? 10:43:31
7 MR. FLUMENBAUM: He can't answer that question as 10:43:32
8 worded, based on the instruction from Uber's counsel. 10:43:37
9 MR. VERHOEVEN: Are you instructing him now? 10:43:39
10 MR. FLUMENBAUM: Correct. 10:43:40
11 MR. VERHOEVEN: Even if there's not -- he learned 10:43:42
12 it through a non-attorney communication? 10:43:44
13 MR. BRILLE: That wasn't the instruction. 10:43:46
14 MR. VERHOEVEN: So that's what I understood the 10:43:48
15 instruction to be, that he could answer if -- 10:43:51
16 MR. FLUMENBAUM: From a non -- from -- 10:43:56
17 MR. VERHOEVEN: Let me ask the question again. 10:43:58
18 BY MR. VERHOEVEN: 10:43:58
19 Q. Did there come a time when the board learned 10:44:01
20 in a board meeting that Mr. Levandowski, in fact, did 10:44:05
21 download the 14,000 files? 10:44:09
22 MR. BRILLE: Same instruction. To the extent that 10:44:12
23 you can answer that question without revealing the 10:44:14
24 content of attorney-client privilege -- 10:44:16
25 THE WITNESS: I'm not aware of a non-privileged 10:44:19

1 discussion where the board shared that knowledge. 10:44:24

2 BY MR. VERHOEVEN: 10:44:24

3 Q. Was there a privileged instance that you 10:44:26

4 can't talk about that exists that's responsive to my 10:44:32

5 question; yes or no? 10:44:34

6 MR. BRILLE: As phrased, it calls for the 10:44:35

7 disclosure of attorney-client privileged information. 10:44:37

8 I instruct you not to answer at all. 10:44:40

9 THE WITNESS: Understood. 10:44:41

10 MR. VERHOEVEN: I'll move on. We've got a good 10:44:45

11 enough record for our motion. 10:44:46

12 BY MR. VERHOEVEN: 10:44:46

13 Q. Let's go back to discussions that we were 10:44:52

14 talking about at the board meeting about the Fifth 10:44:56

15 Amendment. 10:44:56

16 Do you remember that? 10:44:58

17 A. Um-hum. Yes. 10:44:59

18 Q. You had described for me the statements that 10:45:06

19 you made generally at that meeting, or at least that 10:45:09

20 you can recall. 10:45:10

21 A. Right. 10:45:11

22 Q. What did Mr. Kalanick say in response at that 10:45:15

23 meeting? 10:45:17

24 A. To the best of my knowledge, what he said, as 10:45:19

25 I've already stated to you, is that he felt that 10:45:23

1 Anthony hadn't done anything wrong and, therefore, it 10:45:27
2 would be unfair to terminate him for pleading the 10:45:30
3 Fifth. 10:45:31

4 Q. Okay. That was the answer you gave when I 10:45:34
5 asked about conversations with the executive team. So 10:45:36
6 he said the same thing at the board meetings? 10:45:39

7 A. Yes. 10:45:39

8 Q. And did anyone at the board meeting ask the 10:45:43
9 question, then why is he asserting the Fifth Amendment 10:45:46
10 if he didn't do anything wrong? 10:45:49

11 A. I don't know if that question was 10:45:56
12 specifically asked, but I wouldn't be surprised if it 10:45:59
13 was. 10:45:59

14 Q. What discussion do you remember concerning 10:46:04
15 this statement that Mr. Kalanick said about him not 10:46:08
16 doing anything wrong? 10:46:10

17 A. Nothing other than the simple statement. 10:46:21

18 Q. But what do you remember, how the board 10:46:22
19 reacted? Did they say -- he said he didn't do 10:46:26
20 anything wrong. What did the board say in response to 10:46:29
21 that? 10:46:30

22 A. Just because I had better recollection 10:46:33
23 because it was on my mind at the time, my belief was 10:46:39
24 that if he felt compelled to do this, that the board 10:46:43
25 should -- or the company should take action against 10:46:48

1 him and terminate, for the reasons that I've 10:46:50
2 discussed. 10:46:51
3 Q. Right. 10:46:51
4 So -- but I'm asking you specifically, at the 10:46:54
5 board meeting, Kalanick repeated his view -- 10:46:59
6 A. Right.
7 Q. -- that Levandowski didn't do anything 10:47:02
8 wrong -- 10:47:03
9 A. I think I understand your question?
10 I don't remember if there were specific 10:47:06
11 conversations that said, well, if he didn't do 10:47:08
12 anything wrong, why would he plead the Fifth? I don't 10:47:10
13 remember if that happened. It might have. 10:47:13
14 Q. Well, do you remember -- was there response 10:47:15
15 to Mr. Kalanick at the meeting, after he made that 10:47:19
16 statement, just generally? There was a discussion; 10:47:25
17 right? 10:47:26
18 A. Yeah, I think there was a discussion and I 10:47:28
19 think -- and I don't recall exactly who chimed in, but 10:47:32
20 there was others, like me, that felt that taking the 10:47:38
21 Fifth should be dealt with. 10:47:40
22 Q. And who were those people? 10:47:42
23 A. I just said I don't recall exactly who was on 10:47:45
24 that point of view. 10:47:46
25 Q. Do you remember anyone on the board that you 10:47:49

1 can identify? 10:47:50

2 A. I'd be speculating. 10:47:56

3 Q. So as a result -- as a result of the first 10:47:59

4 meeting of the board on this subject, was anything 10:48:05

5 done to Mr. Levandowski? 10:48:09

6 A. Not immediately. 10:48:12

7 Q. Do you remember anything else that was 10:48:20

8 discussed about the Waymo case or Mr. Levandowski 10:48:24

9 during this initial meeting? 10:48:43

10 A. There were generic discussions about how we 10:48:46

11 would respond and who would be representing that kind 10:48:50

12 of thing. There were other discussions that were 10:48:53

13 privileged with those representatives. 10:48:56

14 Q. Anything that wasn't the subject of attorney 10:49:00

15 advice? 10:49:01

16 A. Yeah, eventually, I made the proposition to 10:49:09

17 the board that, in light of all the facts in the 10:49:16

18 situation, that we should create a special committee 10:49:18

19 to oversee this litigation. 10:49:27

20 Q. And what was the response of the board to 10:49:30

21 that suggestion? 10:49:31

22 A. Eventually -- it was positive, because 10:49:35

23 eventually the committee was created, but it took a 10:49:40

24 while. There was a lot of back and forth. 10:49:42

25 Q. Okay. So at the initial meeting, it 10:49:45

1 wasn't -- 10:49:46

2 A. I don't know if that was discussed -- there 10:49:48

3 were lots of meetings, and I don't remember exactly 10:49:50

4 which one it came up. But somewhere along the way, I 10:49:53

5 proposed that it would be a good idea to create a 10:49:57

6 special committee. 10:49:58

7 Q. And then at that meeting, whenever it was, 10:50:01

8 did you get a response to that? 10:50:02

9 A. It wasn't effected when it was first 10:50:06

10 proposed. 10:50:07

11 Q. Okay. Did Mr. Kalanick have a response to 10:50:09

12 that? 10:50:10

13 A. Part of the reason that I was proposing that 10:50:35

14 we put the committee together was to potentially get 10:50:38

15 the authority to take the action that I had already 10:50:41

16 told you I felt was the right move for the company. 10:50:45

17 And so in light of the fact that he didn't agree with 10:50:48

18 that decision, you know, that led to a discussion 10:50:53

19 about whether this committee was the right thing to do 10:50:56

20 or not. 10:50:58

21 Q. And he was against it? 10:51:00

22 A. It required lots of negotiations. So 10:51:06

23 "against it" is strong because it was eventually 10:51:09

24 passed, but it wasn't -- a lot of discussion, you 10:51:15

25 know, ensued about whether it was appropriate or not. 10:51:17

1 Q. And which side of the discussion was he on? 10:51:19
2 For or against? 10:51:23
3 MR. FLUMENBAUM: Objection as to form. 10:51:29
4 THE WITNESS: I can't say equivocally that he was 10:51:38
5 100 percent against it because, once again, it ended 10:51:41
6 up being passed. And I think that resolution was 10:51:44
7 unanimous when it was created. But there was a lot of 10:51:48
8 discussion about whether the committee should have the 10:51:50
9 right to recommend change or effect change, those kind 10:51:55
10 of things, that went back and forth. And that was 10:51:57
11 done probably through a lawyer. I don't know. So I 10:52:02
12 wasn't privy to all of the responses to someone else. 10:52:06
13 BY MR. VERHOEVEN:
14 Q. Do you recall Mr. Kalanick saying anything on 10:52:10
15 the subject? 10:52:11
16 A. Not other than just a general belief that I 10:52:23
17 think he understood what I wanted the end result to 10:52:28
18 be. And so I think from that -- and he was not in 10:52:34
19 favor of that, so I think that led to discussions 10:52:37
20 about whether it made sense or not. 10:52:40
21 Q. And on the subject of whether the committee 10:52:42
22 could make a recommendation, did he argue that the 10:52:47
23 committee should not -- 10:52:49
24 A. I don't know specifically. Because it was 10:52:51
25 done through -- the negotiation -- you know, we were 10:52:56

1 proposing certain language and it was negotiated. But 10:53:01
2 eventually, you know, we got to where we wanted to be. 10:53:05
3 Q. Was there any discussion of whether or not 10:53:07
4 Mr. Kalanick should be on a special committee? 10:53:10
5 A. I think part of the reasoning for the special 10:53:15
6 committee was to make sure it was independent. So the 10:53:20
7 opposite, that he shouldn't be on the committee. 10:53:25
8 Q. So the whole purpose was to have a committee 10:53:28
9 that had independent people? 10:53:30
10 A. Yes. 10:53:30
11 Q. And Mr. Kalanick was not an independent 10:53:32
12 person on this issue? 10:53:34
13 MR. FLUMENBAUM: Objection as to form. 10:53:35
14 THE WITNESS: I did not believe so. I can't speak 10:53:39
15 for the others. 10:53:41
16 MR. VERHOEVEN: Do you have the board . . . 10:53:59
17 BY MR. VERHOEVEN:
18 Q. Just for authentication purposes, I'm going 10:54:35
19 to show you a document marked as 912. 10:54:38
20 (Plaintiff's Exhibit 912 was marked.) 10:54:50
21 MR. FLUMENBAUM: Can I have a copy? 10:54:51
22 MR. VERHOEVEN: Yes. 10:54:52
23 BY MR. VERHOEVEN: 10:54:52
24 Q. Again, the heavy redactions on this document 10:54:59
25 that block out the document were created by counsel 10:55:07

1 for Uber, so I apologize for that. 10:55:12

2 Can you identify this document, to the extent 10:55:21

3 that it's disclosed? 10:55:22

4 A. It appears to be the minutes from an April 10:55:27

5 10th board meeting. 10:55:28

6 Q. Would you have -- to the extent you can 10:55:36

7 recall -- we're talking about this whole conversation 10:55:40

8 about the Fifth Amendment and whatnot. Would that 10:55:44

9 have been started at least by this April 10th, 2017 10:55:51

10 meeting? 10:55:52

11 A. I don't know. I don't think so. 10:55:59

12 Q. Well, I'll represent that it was public that 10:56:03

13 Mr. Levandowski had taken the Fifth before this time. 10:56:07

14 A. Okay. 10:56:07

15 Q. Does that change your answer? 10:56:09

16 A. No, because I had already mentioned to you 10:56:12

17 that there was -- it took me a while -- my experience 10:56:17

18 set of being involved in companies in this particular 10:56:21

19 situation is low, so it took me a while to get an 10:56:25

20 understanding of what I felt was the right course of 10:56:28

21 action. 10:56:30

22 Q. Do you remember any discussion about the 10:56:35

23 Waymo litigation on April 10th, 2017 board meeting? 10:56:40

24 A. I do not. 10:56:41

25 Q. Okay. There came a time when Uber made a 10:56:57

1 decision to remove Mr. Levandowski from working in the 10:57:03
2 area of LiDAR. 10:57:06
3 Are you familiar with that? 10:57:07
4 A. Um-hum. 10:57:08
5 Q. "Yes"?
6 A. Yes. 10:57:09
7 Q. Were you involved in that decision? 10:57:14
8 A. The board was informed of that decision. I 10:57:23
9 wouldn't say that the board was involved in that 10:57:26
10 decision. I think it was a response to many of the 10:57:36
11 conversations that were being had about what is the 10:57:39
12 appropriate course of action in light of everything 10:57:42
13 that's happened. 10:57:43
14 Q. Do you remember when that decision was made? 10:57:46
15 A. I do not. 10:57:47
16 Q. When the board was apprised of the decision, 10:57:51
17 had the decision been communicated to Levandowski yet? 10:57:57
18 A. I don't know. 10:57:58
19 Q. Did the board approve it or were they just 10:58:00
20 apprised of it after the fact? 10:58:03
21 A. I don't have specific recollection. I don't 10:58:10
22 think that was something that there was a -- like a 10:58:15
23 board vote and approval of. 10:58:17
24 Q. Did you read the preliminary injunction order 10:58:24
25 in this case? 10:58:25

Page 101

1 order that was public? 10:59:58

2 A. I didn't have any perspectives that were 11:00:08

3 outside of a discussion from counsel on that topic. 11:00:13

4 Q. Why didn't Uber fire Mr. Levandowski upon the 11:00:20

5 issuance of the preliminary injunction? 11:00:23

6 A. I can't speak to that because I wasn't in a 11:00:32

7 position to have authority to make that decision. 11:00:35

8 Q. Who was? 11:00:36

9 A. Presumably Travis, the CEO. 11:00:39

10 Q. So the board didn't have authority to direct 11:00:42

11 that -- I thought you -- withdrawn. 11:00:46

12 I thought you previously mentioned that you 11:00:48

13 had recommended that he be terminated -- 11:00:50

14 A. I had. I had. 11:00:52

15 Q. -- at a board meeting. 11:00:53

16 A. Yeah. 11:00:54

17 Q. But the board didn't have authority to order 11:00:56

18 that? 11:00:57

19 A. The board did not order that, if that's your 11:01:00

20 question. 11:01:00

21 Q. But they had the authority to? 11:01:03

22 A. I suppose they could have made a motion and 11:01:06

23 voted to do that. 11:01:08

24 Q. And you encouraged the board to do that? 11:01:11

25 A. I encouraged the board to terminate once I 11:01:13

1 had an understanding of what my interpretation was of 11:01:18
2 him pleading the Fifth. And my efforts around 11:01:22
3 creating the committee were my avenue to try and see 11:01:27
4 that through. 11:01:27

5 Q. After the issuance of the preliminary 11:01:36
6 injunction order, did you have any discussions with 11:01:39
7 Mr. Kalanick about terminating Mr. Levandowski? 11:01:42

8 A. Not specifically related to that event. 11:01:47

9 Q. Okay. So it didn't cause you to have any 11:01:50
10 more conversations with Mr. Kalanick? 11:01:54

11 A. No. But I had already determined that I 11:01:56
12 thought the best course of action was termination. So 11:01:58
13 like I was not more compelled; I was already 11:02:02
14 compelled. 11:02:04

15 Q. Did you discuss the preliminary injunction 11:02:05
16 order with Mr. Kalanick and repeat your 11:02:09
17 recommendation? 11:02:10

18 A. Not outside of a privileged conversation, no. 11:02:14

19 Q. Was there a board meeting about the 11:02:19
20 preliminary injunction? 11:02:20

21 A. I don't remember if there was one called. I 11:02:23
22 don't think so. There were lots of board meetings at 11:02:27
23 this moment in time. 11:02:29

24 Q. Do you recall receiving -- withdrawn. 11:02:34

25 Did you ask to see the due diligence report 11:02:39

Page 104

1 MR. FLUMENBAUM: You can answer that yes or no. 11:03:34

2 THE WITNESS: I don't have any notes in front of 11:03:36

3 me. That sounds like it would be in the general time 11:03:38

4 frame, but I . . . it could be off, you know, by a 11:03:45

5 week or two. I don't have the specific date. 11:03:48

6 BY MR. VERHOEVEN: 11:03:48

7 Q. In that range? 11:03:49

8 A. In that range. 11:03:50

9 Q. Why did you ask for it? 11:03:52

10 MR. FLUMENBAUM: Again, I'll let you answer that 11:03:57

11 question, but don't talk about any conversations that 11:04:06

12 you had with either Uber's counsel or your personal 11:04:10

13 counsel at this point. 11:04:14

14 THE WITNESS: As I already referenced, I felt that 11:04:22

15 this litigation, the one we're involved in today, was 11:04:26

16 critical and important to the company. Once I had 11:04:30

17 gotten up to speed on Anthony's decision to plead the 11:04:35

18 Fifth and the fact that we should be terminating, I 11:04:39

19 felt that it was my duty as a board member to try and 11:04:42

20 know as much as possible about this situation so I 11:04:45

21 could advise the company in the best possible way. 11:04:54

22 BY MR. VERHOEVEN: 11:04:54

23 Q. After you read the diligence report, did you 11:04:59

24 take any action based on reading it? Yes or no? 11:05:06

25 MR. FLUMENBAUM: Again, no waiver; correct? 11:05:08

1	MR. VERHOEVEN: Correct.	11:05:10
2	MR. FLUMENBAUM: You can answer that.	11:05:15
3	THE WITNESS: I did not take any immediate	11:05:30
4	specific action related to that.	11:05:35
5	BY MR. VERHOEVEN:	11:05:35
6	Q. What about non-immediate specific action?	11:05:39
7	MR. FLUMENBAUM: Again, I don't want to have to	11:05:54
8	say this. Do we have -- this whole line of	11:05:56
9	questioning, not going to be any argument of the	11:05:59
10	waiver --	11:05:59
11	MR. VERHOEVEN: Agreed. Agreed.	11:06:01
12	MR. FLUMENBAUM: Because I have to obey the waiver	11:06:03
13	rules here.	11:06:04
14	MR. VERHOEVEN: Agreed.	11:06:05
15	MR. FLUMENBAUM: Okay.	11:06:05
16	THE WITNESS: I'm not aware of anything that	11:06:29
17	specifically ties to that investigation in terms of my	11:06:35
18	action.	11:06:36
19	BY MR. VERHOEVEN:	11:06:36
20	Q. You gave a copy of the diligence report to	11:06:39
21	your personal counsel at Paul Weiss; right?	11:06:43
22	MR. FLUMENBAUM: Again?	11:06:45
23	MR. VERHOEVEN: I have a continuing agreement with	11:06:47
24	you.	11:06:48
25	MR. FLUMENBAUM: All right.	11:06:48

1 THE WITNESS: Yes. 11:06:51

2 BY MR. VERHOEVEN: 11:06:51

3 Q. Why did you do that? 11:06:52

4 A. I think it's consistent with what I said 11:06:55

5 before. I was trying to understand the details of the 11:07:02

6 litigation and the situation and make sure that I was 11:07:07

7 as informed as I possibly could be. 11:07:11

8 Q. Were you concerned -- withdrawn. 11:07:14

9 Did you send it to your personal lawyer to 11:07:16

10 make sure that you did the right things with respect 11:07:19

11 to this lawsuit? 11:07:22

12 MR. BRILLE: Object to form. 11:07:28

13 THE WITNESS: Yes. 11:07:29

14 BY MR. VERHOEVEN: 11:07:29

15 Q. Did you send it to him to ensure that you 11:07:33

16 were protected from liability? 11:07:34

17 MR. FLUMENBAUM: Objection. I'm going to instruct 11:07:35

18 him not to answer that. 11:07:40

19 BY MR. VERHOEVEN: 11:07:40

20 Q. Was there any other reason that you sent a 11:07:43

21 copy of this specific report to your personal lawyer? 11:07:47

22 MR. FLUMENBAUM: Other than what he's answered? 11:07:49

23 MR. VERHOEVEN: Yes. 11:07:50

24 THE WITNESS: And just -- you keep saying 11:07:56

25 "personal." Paul Weiss represents Benchmark, our 11:07:59

1 firm. He's not my personal lawyer. 11:08:01

2 BY MR. VERHOEVEN: 11:08:01

3 Q. So he wasn't your personal lawyer? 11:08:04

4 A. Yeah. 11:08:05

5 Q. Okay. Thanks for clarifying that. 11:08:08

6 The question is outstanding. 11:08:11

7 Was there any other reason other than what 11:08:14

8 you testified to -- 11:08:15

9 A. No. 11:08:16

10 Q. And then you gave a copy to 11:08:21

11 Shearman & Sterling; is that right? 11:08:23

12 A. It's possible. 11:08:30

13 Q. Why would you give a copy to 11:08:33

14 Shearman & Sterling? 11:08:34

15 A. They had been hired to represent the 11:08:36

16 independent committee that had been put together. 11:08:40

17 Q. I see. 11:08:40

18 MR. VERHOEVEN: Can I get 11:09:05

19 Let's mark as Exhibit 913 a copy of board 11:09:24

20 minutes dated May 15th, 2017. 11:09:28

21 (Plaintiff's Exhibit 913 was marked.) 11:09:47

22 BY MR. VERHOEVEN: 11:09:47

23 Q. Can you identify this, again, 11:09:49

24 redacted-by-Uber document? 11:09:52

25 (Witness reviews document.) 11:10:16

1 A. Okay. 11:10:16

2 Q. Can you identify that for me. 11:10:18

3 A. It's the minutes from a May 15th board 11:10:21

4 meeting of Uber. 11:10:23

5 Q. And you attended that meeting; right? 11:10:25

6 A. Yes. 11:10:25

7 Q. And one of the subjects discussed at that 11:10:29

8 meeting was a report on the Waymo litigation? 11:10:33

9 A. Correct. 11:10:35

10 MR. VERHOEVEN: And I assume, Counsel, that if I 11:10:39

11 ask any questions about the substance of that report, 11:10:41

12 you'll instruct the witness not to answer? 11:10:43

13 MR. FLUMENBAUM: That's correct. Based on Uber 11:10:48

14 taking the Fifth on that. 11:10:49

15 MR. VERHOEVEN: Oh, it's their fault. 11:10:52

16 MR. FLUMENBAUM: It's no one's fault. It's either 11:10:54

17 privileged or it's not privileged. 11:10:57

18 BY MR. VERHOEVEN: 11:10:57

19 Q. If you turn to the second page, Mr. Gurley. 11:10:59

20 A. Yes. 11:11:01

21 Q. You see it says, "The board then further 11:11:04

22 discussed the impact on the company of continuing to 11:11:09

23 employ Mr. Levandowski"? 11:11:11

24 Do you see that? 11:11:12

25 A. Yes. 11:11:12

1 Q. Can you describe for me that discussion. 11:11:15

2 A. I think it's consistent with what we've 11:11:19

3 already discussed before, which is, there was a 11:11:27

4 growing, I think, consensus that the appropriate 11:11:33

5 action to take in this situation was termination. 11:11:36

6 Q. Did termination occur after this meeting? 11:11:42

7 I'm sorry. 11:11:43

8 Did termination occur as a result of this 11:11:46

9 meeting? 11:11:47

10 A. I don't think so. 11:11:48

11 Q. Why not? 11:11:49

12 A. I don't recall exactly why not, but I know in 11:11:55

13 my -- I know specifically that the committee was 11:12:01

14 formed prior to the termination. 11:12:05

15 Q. Okay. 11:12:06

16 A. And I think the committee was formed after 11:12:10

17 this. I seem to recall, I should say. 11:12:12

18 Q. Is it fair to say that, at this point in 11:12:15

19 time, Mr. Kalanick was aggressively trying to block 11:12:19

20 efforts to terminate Mr. Levandowski? 11:12:22

21 MR. BRILLE: Object to form. 11:12:25

22 THE WITNESS: I can't assert -- I can't qualify 11:12:30

23 the aggressive part, but it is my interpretation that 11:12:34

24 he was not in favor of termination. 11:12:38

25 BY MR. VERHOEVEN: 11:12:38

1 Q. Was he trying to block it? 11:12:41

2 A. I would say he was arguing that we should 11:12:47

3 not. 11:12:48

4 Q. He was the lead person arguing that; right? 11:12:51

5 A. From my perspective, correct. 11:12:54

6 Q. Was there anyone else on the board arguing 11:12:56

7 that at this point in time? 11:12:58

8 A. I do not recall anyone else having a strong 11:13:02

9 opinion of that on that side of the argument. 11:13:05

10 Q. What about prior board meetings? Did anyone 11:13:09

11 other than Mr. Levandowski [sic] argue that 11:13:13

12 termination was inappropriate -- 11:13:15

13 MR. FLUMENBAUM: Objection as to form. 11:13:17

14 BY MR. VERHOEVEN: 11:13:17

15 Q. -- at the board meetings? 11:13:19

16 MR. FLUMENBAUM: Objection as to form. 11:13:21

17 I think you misspoke. 11:13:22

18 BY MR. VERHOEVEN: 11:13:22

19 Q. Oh. Thank you. 11:13:25

20 What about other prior board meetings? Did 11:13:27

21 anyone other than Mr. Kalanick argue that termination 11:13:30

22 was inappropriate? 11:13:32

23 A. Not that I'm aware of. 11:13:34

24 Q. At this point in time, of this board meeting, 11:13:44

25 Mr. Levandowski was refusing to cooperate with Uber; 11:13:49

1 right? 11:13:49

2 A. That is my interpretation of the pleading the 11:13:54

3 Fifth. 11:13:56

4 Q. So yes? 11:13:57

5 A. Yes. 11:13:57

6 Q. And he had been refusing to cooperate from 11:14:01

7 the beginning of the complaint all the way through 11:14:04

8 this point; right? 11:14:05

9 MR. FLUMENBAUM: Objection as to form. 11:14:12

10 THE WITNESS: I didn't have specific conversations 11:14:15

11 with him. I don't even know if I ever have. And so 11:14:19

12 my interpretation of the noncooperation started with 11:14:23

13 the pleading of the Fifth. 11:14:25

14 BY MR. VERHOEVEN: 11:14:25

15 Q. Okay. 11:14:26

16 A. That's the only knowledge I have. 11:14:28

17 Q. All right. So I think I may have asked this, 11:14:38

18 but let me just try it: This reference about 11:14:42

19 discussing the further impact of the company, was 11:14:45

20 anything new discussed at this meeting than what 11:14:48

21 you've already testified to? 11:14:50

22 A. There were discussions about whether, you 11:14:57

23 know, him leaving would impact employee morale or 11:15:06

24 retention within the group that he was leading. That 11:15:09

25 even was discussed in the decision to move him, you 11:15:15

1 know, into a different role at the company. And so 11:15:18
2 there were a lot of discussions about that topic. 11:15:21
3 Q. Can you summarize those discussions for me, 11:15:24
4 as best you recall? 11:15:26
5 A. Sure. There were arguments made that a lot 11:15:29
6 of the people that worked in his department were loyal 11:15:35
7 to him and that if he were terminated, we might have a 11:15:38
8 retention problem in the autonomous. There were other 11:15:42
9 people that had different points of view on that. 11:15:44
10 Q. And which people had different points of 11:15:47
11 view? 11:15:48
12 Let me withdraw that. 11:15:49
13 Who was making that argument? Was it 11:15:51
14 Mr. Kalanick? 11:15:52
15 A. Yes. 11:15:52
16 Q. Anyone else? 11:15:54
17 A. It's possible. It's possible. I don't 11:16:00
18 recall, but it's possible that someone on the HR team 11:16:04
19 or something else might have validated that point of 11:16:07
20 view. 11:16:08
21 Q. Did anyone on the board argue in favor of 11:16:10
22 that point of view? 11:16:12
23 A. Not -- not in any meaningful way. 11:16:19
24 Q. Did you respond to that in any of these 11:16:22
25 meetings? 11:16:23

1 A. To that assertion? 11:16:24

2 Q. Yeah. 11:16:26

3 A. It's possible -- yeah, I think I made the 11:16:39

4 point that if someone, you know, retains loyalty to 11:16:44

5 someone who is pleading the Fifth in a situation like 11:16:47

6 this, it may not be the type of employees that we want 11:16:50

7 to retain anyway. 11:16:52

8 Q. Was there any discussion about what happens 11:17:00

9 with respect to compensation if Mr. Levandowski is 11:17:05

10 removed from LiDAR and/or terminated? When I say 11:17:12

11 "compensation," I mean both him and his team. 11:17:15

12 A. Not at that moment in time. 11:17:18

13 Q. Not at the May 15th? 11:17:22

14 A. Right. 11:17:22

15 Q. What impact was discussed that 11:17:28

16 would -- withdrawn. 11:17:30

17 This sentence here refers to, quote, "Board 11:17:33

18 then further discussed the impact on the company of 11:17:39

19 continuing to employ Mr. Levandowski." 11:17:42

20 What do you remember about the discussion of 11:17:44

21 what the impact on the company would be if he wasn't 11:17:48

22 terminated? 11:17:49

23 A. If he wasn't terminated -- yeah, so this I 11:17:52

24 think relates to something we also discussed. There 11:17:55

25 was -- it's kind of circular since we're still 11:17:59

1 involved in that litigation at this very moment in 11:18:03
2 time, but it's fairly obvious that the judge had 11:18:06
3 strong opinions about our nontermination of Anthony. 11:18:10
4 And so you're making -- you're having discussions 11:18:14
5 about the risk of that calculation and also -- 11:18:16
6 MR. FLUMENBAUM: I don't want you to discuss 11:18:18
7 anything legally -- 11:18:21
8 THE WITNESS: I think that was discussed -- I 11:18:23
9 think that was discussed generally, but that would be 11:18:26
10 the line of reasoning. 11:18:27
11 BY MR. VERHOEVEN: 11:18:27
12 Q. That there might be adverse legal 11:18:32
13 consequences? 11:18:33
14 A. Sure. 11:18:34
15 Q. Any other impacts discussed? 11:18:36
16 A. It's possible we discussed negative corporate 11:18:39
17 image impact. 11:18:42
18 Q. And what was discussed about that? 11:18:44
19 A. I'd go back to what I stated earlier. If the 11:18:49
20 general expectation of best practice in an area is to 11:18:53
21 terminate and you're not, it's going to infer 11:18:57
22 reflection to the external world on why you're acting 11:19:01
23 in a way that's inconsistent with best practice. 11:19:04
24 Q. And by that you mean the internal world would 11:19:08
25 think that's not appropriate?

1 A. External world. 11:19:09

2 Q. External world?

3 A. Correct.

4 Q. Let me ask it so we get a clear record. 11:19:12

5 By that statement, you mean that the external 11:19:15

6 world would think that's not appropriate? 11:19:18

7 A. Correct. 11:19:18

8 Q. And that would have a negative impact on -- 11:19:21

9 A. Could have, yes. 11:19:22

10 Q. Let me finish the question. 11:19:23

11 That would have a negative impact on the 11:19:26

12 company's image? 11:19:28

13 MR. FLUMENBAUM: Objection as to form. 11:19:29

14 THE WITNESS: Yeah. I would just state it in my 11:19:32

15 own words, which is, it could be having a negative 11:19:35

16 impact. Hard to prove, but something that was of 11:19:39

17 concern, yes. 11:19:41

18 BY MR. VERHOEVEN: 11:19:41

19 Q. Okay. Anything else on the subject of the 11:19:43

20 impact to the company to continue to employ 11:19:46

21 Mr. Levandowski that you can recall? 11:19:48

22 A. No. 11:19:48

23 Q. The end result of this meeting was that the 11:19:57

24 board decided that -- to not terminate him at that 11:20:01

25 point in time; right? 11:20:02

Page 117

1 A. Prior to 2017, the Uber board met 11:21:50
2 predominantly quarterly. 11:21:53
3 Q. Once a quarter? 11:21:54
4 A. Yes. 11:21:54
5 Q. And did that change in 2017? 11:21:57
6 A. Yes. 11:21:57
7 Q. Why? 11:21:59
8 A. There were numerous issues that were of 11:22:04
9 importance that were impacting the company that 11:22:07
10 resulted in the board taking more frequent board 11:22:11
11 meetings, including the Waymo litigation. 11:22:14
12 Q. Okay. So this is -- this reflects the 11:22:18
13 minutes of a May 22 board meeting; right? 11:22:21
14 A. Correct. 11:22:21
15 Q. And is this the meeting in which the special 11:22:27
16 committee on the Waymo dispute was created? 11:22:30
17 A. Correct. 11:22:30
18 Q. You were at this meeting? 11:22:34
19 A. It says I was by telephone. 11:22:36
20 Q. Were you the one who suggested the creation 11:22:40
21 of a special committee? 11:22:42
22 A. That is my belief, yes. The original -- 11:22:43
23 Q. And we already talked about --
24 A. -- idea for it, yes. 11:22:47
25 Q. Sorry about that. 11:22:48

1 We already talked about the back-and-forth on 11:22:52
2 that discussion; right? 11:22:53
3 A. Right. 11:22:53
4 Q. Is there anything, looking at this document, 11:22:56
5 that you remember in addition to what you've already 11:22:58
6 talked about? 11:22:59
7 A. No. Simply that the appendix is the 11:23:05
8 resolution that was passed. 11:23:08
9 Q. You see, in the paragraph under letter 1, the 11:23:15
10 second-to-last sentence says, "The board had a lengthy 11:23:22
11 discussion regarding the creation of such special 11:23:25
12 committee during which each member of the board 11:23:28
13 contributed"? 11:23:29
14 Do you see that? 11:23:30
15 A. Yes. 11:23:31
16 Q. Do you remember what any of these board 11:23:39
17 members said at this meeting? 11:23:41
18 A. I don't remember a particular member having a 11:23:56
19 specific point of view other than my own. There were 11:23:59
20 discussions that relate to the wording that ended up 11:24:04
21 in the proposition -- or in the resolution about 11:24:07
22 whether a committee should have the ability to take 11:24:11
23 action or direct action and whether it was appropriate 11:24:15
24 for a board to step into that role or not and whether 11:24:20
25 they were impeding on the rights of management in 11:24:22

1 doing so. And that has been part of the spirited 11:24:27
2 discussion around the back-and-forth on the 11:24:29
3 resolution. 11:24:30
4 Q. Mr. Kalanick was against the committee having 11:24:33
5 the authority; correct? 11:24:34
6 A. That is my recollection. 11:24:36
7 Q. And the discussion was spirited? 11:24:38
8 A. Yes. 11:24:39
9 Q. What do you mean by that? 11:24:42
10 A. People had strong points of view, including 11:24:47
11 myself. 11:24:50
12 Q. Was a vote taken? 11:24:56
13 A. I believe this was past unanimously. That's 11:25:05
14 my recollection. Does this say? 11:25:08
15 MR. FLUMENBAUM: Can I guide him to where it says? 11:25:11
16 MR. VERHOEVEN: Yes. 11:25:13
17 MR. FLUMENBAUM: It says in the first paragraph. 11:25:15
18 THE WITNESS: Yeah, unanimous. That was my . . . 11:25:18
19 BY MR. VERHOEVEN: 11:25:18
20 Q. So why did Mr. Kalanick -- he was a board 11:25:23
21 member at the time, Mr. Kalanick; right? 11:25:24
22 A. Correct. 11:25:24
23 Q. Why did he vote for it? 11:25:27
24 A. You would have to ask him. I did state 11:25:29
25 earlier that eventually he came around and agreed to 11:25:34

1 this. 11:25:44

2 Q. So this special committee was authorized to 11:25:50

3 investigate the issues relating to the Waymo dispute, 11:25:54

4 make findings and recommendations to the board, among 11:25:58

5 other things? 11:25:59

6 A. Yes. 11:25:59

7 Q. Did the special committee make findings? 11:26:05

8 A. As we were getting the special committee set 11:26:15

9 up, employing counsel for this -- yeah, I mean, 11:26:20

10 eventually there were several meetings of this special 11:26:23

11 committee. I've left the board, so I don't know 11:26:27

12 what's continuing to happen there. And obviously it 11:26:30

13 relates to this litigation, but, yes, there have been 11:26:32

14 lots of meetings of the committee. 11:26:35

15 Q. So by this date, you had left the board? 11:26:44

16 A. No. 11:26:44

17 Q. Okay. 11:26:45

18 A. No. No. No. But this was just -- the 11:26:49

19 committee hadn't met. The committee was formed. 11:26:52

20 Q. I see. 11:26:52

21 By the time that any findings or 11:26:55

22 recommendations -- well, let me put it a different 11:26:58

23 way. 11:26:59

24 No findings and recommendations had been made 11:27:01

25 before you left the board, or had they? 11:27:05

1 A. I'd say -- well, I mean, none . . . the 11:27:16
2 initial impetus of pushing to have this created was to 11:27:22
3 ensure that we made the right decision around 11:27:25
4 termination. And prior to this committee getting off 11:27:29
5 the ground and acting in the next board meeting, 11:27:33
6 Travis recommended that action. Since then, this 11:27:38
7 committee went on and existed and met frequently to 11:27:44
8 discuss this very litigation, but all those 11:27:47
9 conversations would be privileged. 11:27:48

10 MR. VERHOEVEN: Our thing went down. How long 11:27:52
11 have we been going? 11:27:54

12 THE VIDEOGRAPHER: An hour and six minutes. 11:27:56

13 MR. VERHOEVEN: Well, let's just keep going then. 11:28:01

14 BY MR. VERHOEVEN: 11:28:01

15 Q. You said Travis made that recommendation in 11:28:03
16 your last answer. I'm just not clear what you meant 11:28:06
17 by that. 11:28:07

18 A. At the next board meeting after this, at the 11:28:10
19 beginning of the meeting, Travis started by 11:28:12
20 recommending the termination of Anthony, before the 11:28:16
21 committee got off and going. 11:28:18

22 Q. I see. 11:28:18

23 So it's your belief that the board -- or 11:28:21
24 excuse me. 11:28:22

25 Is it your belief that the special committee 11:28:28

1 never made formal findings and recommendations? 11:28:31

2 A. No, I didn't say that. 11:28:33

3 Q. Okay. What you're saying is that the 11:28:36

4 decision on termination had been made before they made 11:28:39

5 any findings and recommendations? 11:28:41

6 A. Correct. 11:28:41

7 Q. And by the time you left, they hadn't made 11:28:45

8 any formal findings and recommendations otherwise? 11:28:52

9 A. I don't have any answer -- I don't have 11:28:53

10 anything to convey on that that would be outside of 11:28:56

11 privilege. 11:28:58

12 Q. Well, yes or no, did they make any findings 11:29:00

13 and recommendations? 11:29:01

14 A. "Findings" is a very generic term. 11:29:07

15 Q. I'm just reading off of the -- 11:29:09

16 A. Yeah. Yeah. I'm certain that they made 11:29:12

17 findings. 11:29:13

18 Q. Did they make those in writing? 11:29:17

19 A. I do not know. 11:29:19

20 Q. How was the members of the special committee 11:29:42

21 chosen? 11:29:45

22 A. There's a common refrain in many of these 11:29:53

23 committees that the three people that ended up on them 11:29:59

24 were the same, which were me and David Bonderman and 11:30:02

25 Arianna Huffington, which were the same of some of the

1 other committees. And it was a result of deemed 11:30:08
2 independence and, I think, availability. 11:30:13
3 And so two of the board members were 11:30:16
4 cofounders -- early employees and/or cofounders, 11:30:21
5 Garrett and Ryan. So they typically weren't 11:30:25
6 considered independent for these types of committees. 11:30:27
7 Q. Okay.
8 A. Yasir had just joined, but lives in Saudi 11:30:31
9 Arabia so it's difficult for him to be present. And 11:30:36
10 so the end result of those things is that most of 11:30:39
11 these committees had those three people, including 11:30:43
12 myself. 11:30:44
13 Q. Okay. As part of the special committee, did 11:30:58
14 you conduct any interviews with Uber employees or 11:31:03
15 officers? 11:31:05
16 A. I'm not aware of the committee conducting 11:31:12
17 direct interviews, no. 11:31:15
18 Q. You see -- if you would turn to page with the 11:31:19
19 503 on the back of the control number. 11:31:25
20 If you look at that, "The board expressly 11:31:30
21 delegates to the special committee the authority to 11:31:33
22 conduct interviews"? 11:31:34
23 A. Understood. 11:31:35
24 Q. Does that refresh your recollection? 11:31:37
25 A. No. No. I understand that they had the 11:31:39

1 authority. I'm unaware of any direct interviews 11:31:43
2 conducted by the committee to an employee. 11:31:48
3 Q. Under Item 1 -- 11:31:50
4 A. I mean, other than legal conversations, where 11:31:53
5 you're asking a lawyer about the case, but not 11:31:56
6 interviewing a non-legal executive for the purpose of 11:32:02
7 investigation, not direct. 11:32:04
8 Q. Okay. What about interviews of Stroz? 11:32:09
9 A. I'm unaware of any. 11:32:12
10 Q. And under Item 1? 11:32:15
11 A. I'm unaware of any -- of any direct from a 11:32:19
12 committee member. 11:32:20
13 Q. Did somebody interview Stroz? 11:32:25
14 A. I don't know. Possible. 11:32:26
15 Q. And then just to follow up on your earlier 11:32:28
16 answer, on Item 1 on this page, the committee retained 11:32:33
17 Shearman & Sterling? 11:32:38
18 A. Correct. 11:32:39
19 Q. As a result of this meeting, I take it the 11:32:59
20 decision to terminate Mr. Levandowski has still not 11:33:03
21 been made? 11:33:04
22 A. That is correct. 11:33:05
23 Q. As of this time, May 22, 2017, was the board 11:33:18
24 aware of the veracity of the claim of whether 11:33:22
25 Mr. Levandowski had improperly downloaded files? 11:33:28

HIGHLY CONFIDENTIAL - ATTORNEYS EYES ONLY

1 MR. FLUMENBAUM: Objection. 11:33:29

2 MR. BRILLE: Objection. 11:33:29

3 MR. FLUMENBAUM: You want to exclude counsel from 11:33:31

4 any discussions with the board? I can't let him 11:33:39

5 answer that question as worded. 11:33:43

6 MR. VERHOEVEN: So you're instructing him on just 11:33:45

7 general statements -- 11:33:47

8 MR. FLUMENBAUM: No, on privilege. 11:33:49

9 BY MR. VERHOEVEN: 11:33:49

10 Q. As of May 22, had the board received -- this 11:34:08

11 is a yes or no. 11:34:08

12 As of May 22, had the board received any 11:34:13

13 report on the veracity of the allegation that 11:34:16

14 Mr. Levandowski had downloaded 14,000 files? 11:34:25

15 MR. FLUMENBAUM: I'm going to instruct him not to 11:34:27

16 answer that question as worded, based on privilege. 11:34:33

17 MR. VERHOEVEN: Is there a way I could word it 11:34:36

18 that you would say is not privileged? 11:34:38

19 MR. FLUMENBAUM: Other than either documents 11:34:44

20 received that are still claimed to be privileged in 11:34:48

21 this situation, did the board receive any reports from 11:34:54

22 anyone other than counsel, and then your . . . 11:34:58

23 MR. VERHOEVEN: Okay. 11:34:59

24 BY MR. VERHOEVEN:

25 Q. Can you answer that question? 11:35:00

1 MR. FLUMENBAUM: I think you have to rephrase it. 11:35:03

2 MR. VERHOEVEN: I don't want to make a mistake. 11:35:05

3 Let me reread what you said then. 11:35:07

4 BY MR. VERHOEVEN: 11:35:07

5 Q. Other than either documents received that are 11:35:14

6 still claimed to be privileged in this situation, did 11:35:17

7 the board receive any reports from anyone other than 11:35:20

8 counsel with respect to the download of the 14,000 11:35:25

9 files? 11:35:26

10 A. No. 11:35:27

11 Q. And this is a yes or no. 11:35:33

12 Did the board receive a report from counsel 11:35:36

13 on that subject matter? 11:35:38

14 MR. FLUMENBAUM: Instruction not to answer. 11:35:41

15 BY MR. VERHOEVEN: 11:35:41

16 Q. As of May 22, did the board have any 11:35:48

17 information, any factual information, not legal 11:35:52

18 advice, but factual information about the allegation 11:35:57

19 that Mr. Levandowski had downloaded 14,000 files? 11:36:01

20 MR. FLUMENBAUM: Instruction not to answer. 11:36:03

21 BY MR. VERHOEVEN: 11:36:03

22 Q. As of this date, did the board know one way 11:36:15

23 or the other whether Stroz had documents that 11:36:24

24 Mr. Levandowski had taken from Google? 11:36:27

25 MR. FLUMENBAUM: Instruction not to answer. 11:36:29

1	BY MR. VERHOEVEN:	11:36:29
2	Q. Did you know one way or the other?	11:36:31
3	MR. FLUMENBAUM: Instruction not to answer.	11:36:53
4	BY MR. VERHOEVEN:	11:36:53
5	Q. If you had known that it was true that	11:36:55
6	Mr. Levandowski downloaded 14,000 Google files and	11:37:01
7	then went to Otto and was purchased by Uber, would you	11:37:06
8	have done anything about that?	11:37:08
9	MR. BRILLE: Object to form.	11:37:09
10	MR. FLUMENBAUM: You may answer that question as	11:37:11
11	worded.	11:37:12
12	THE WITNESS: When would I have known that?	11:37:16
13	BY MR. VERHOEVEN:	
14	Q. I'm saying, if you would've known that --	
15	A. At what point in time would I have known	11:37:18
16	that?	11:37:19
17	Q. Any point in time.	11:37:21
18	A. Well, if I had known that, I would have	11:37:24
19	objected to the transaction, if I had known that at	11:37:29
20	the date of that transaction.	11:37:31
21	Q. Okay. So if you had known that -- if you had	11:37:33
22	known the results of the due diligence report, would	11:37:37
23	you have objected to the transaction?	11:37:39
24	MR. BRILLE: Object to form.	11:37:47
25	MR. FLUMENBAUM: We're making assumptions as to	11:37:55

1 what's in the due diligence report, so -- is there a 11:37:58
2 way you can rephrase that question? 11:38:02
3 MR. VERHOEVEN: I don't think so. I'm asking the 11:38:06
4 witness -- I'll ask it again. 11:38:08
5 BY MR. VERHOEVEN: 11:38:08
6 Q. Without revealing the substance of the 11:38:11
7 diligence report, if you had known about it at the 11:38:16
8 time of the transaction, would you have objected to 11:38:19
9 moving forward with the transaction? 11:38:22
10 MR. BRILLE: Object to form. 11:38:23
11 MR. FLUMENBAUM: Would you agree that follows our 11:38:25
12 non-waiver -- 11:38:26
13 MR. VERHOEVEN: Yes. 11:38:28
14 THE WITNESS: Yes. 11:38:32
15 MR. VERHOEVEN: And if I ask why, I assume I'll 11:38:40
16 get an instruction? 11:38:41
17 MR. FLUMENBAUM: You will until that report is 11:38:42
18 released. 11:38:44
19 MR. VERHOEVEN: Okay. 11:38:44
20 BY MR. VERHOEVEN:
21 Q. Was that -- withdrawn. 11:38:48
22 Would you have considered that to be material 11:38:52
23 information with respect to whether to approve the 11:38:57
24 transaction or not? 11:38:59
25 MR. FLUMENBAUM: Same -- not going to argue 11:39:03

1	waiver?	11:39:03
2	MR. VERHOEVEN: Correct.	11:39:04
3	MR. BRILLE: Object to form.	11:39:05
4	MR. FLUMENBAUM: You can answer yes or no.	11:39:07
5	THE WITNESS: Yes.	11:39:08
6	BY MR. VERHOEVEN:	11:39:08
7	Q. What was your reaction when you saw -- when	11:39:32
8	you read the Stroz report with respect to the fact	11:39:37
9	that it was not disclosed to the board at the time of	11:39:39
10	the acquisition? Were you upset?	11:39:43
11	MR. BRILLE: I'll object to form.	11:39:46
12	MR. FLUMENBAUM: I'll object to the form also.	11:39:49
13	Again I'll let him answer that without claim of	11:39:55
14	waiver.	11:39:56
15	MR. VERHOEVEN: Yes.	11:39:56
16	THE WITNESS: Yes.	11:39:58
17	BY MR. VERHOEVEN:	11:39:58
18	Q. Why?	11:40:00
19	MR. BRILLE: Same objections.	11:40:01
20	MR. VERHOEVEN: I'm asking for his reaction.	11:40:03
21	MR. FLUMENBAUM: So you got -- you got his answer.	11:40:06
22	He can't answer more than that without going into	11:40:09
23	substance.	11:40:10
24	BY MR. VERHOEVEN:	11:40:10
25	Q. Did you call up Mr. Levandowski after reading	11:40:13

1 it and accost him about it? 11:40:15

2 I'm sorry. Let me withdraw that. 11:40:16

3 Did you call him -- 11:40:18

4 MR. FLUMENBAUM: Maybe we should take a break. 11:40:20

5 MR. VERHOEVEN: Just one more. 11:40:22

6 BY MR. VERHOEVEN: 11:40:22

7 Q. Did you call up Mr. Kalanick or e-mail him or 11:40:25

8 something, in any way communicate with him, to accost 11:40:29

9 him about the fact that this was not disclosed prior 11:40:32

10 to the board making the decision to acquire? 11:40:37

11 MR. BRILLE: Object to form. 11:40:38

12 THE WITNESS: I don't know if there was -- I don't 11:40:40

13 know if I called him directly or specifically. 11:40:43

14 BY MR. VERHOEVEN: 11:40:43

15 Q. Did you have a conversation? 11:40:45

16 A. With anybody? 11:40:47

17 Q. With Mr. Kalanick. 11:40:50

18 A. Yeah, I don't know -- I don't know if I had a 11:40:53

19 direct . . . I just don't remember. 11:40:56

20 Q. You don't remember expressing any anger to 11:41:00

21 him about it? 11:41:04

22 A. It's possible. There's a lot going on at the 11:41:16

23 time. 11:41:16

24 Q. You were angry about it, weren't you? 11:41:19

25 A. I was. 11:41:20

1 Q. And it's possible you communicated that to 11:41:22
2 Mr. Levandowski -- or to Mr. Kalanick? 11:41:25
3 A. It's possible, but I don't have -- 11:41:26
4 MR. FLUMENBAUM: Not Levandowski. 11:41:27
5 THE WITNESS: Right. 11:41:28
6 I don't have specific recollection of having 11:41:31
7 done that, but it's possible. 11:41:33
8 BY MR. VERHOEVEN: 11:41:33
9 Q. It's more than likely; right? 11:41:35
10 A. I don't know. 11:41:37
11 MR. FLUMENBAUM: Objection. Objection. 11:41:38
12 MR. VERHOEVEN: Do you want to take a break? 11:41:42
13 MR. FLUMENBAUM: Sure. Let's take a short break. 11:41:44
14 THE VIDEOGRAPHER: This marks the end of DVD No. 2 11:41:47
15 in the deposition of William Gurley. We're off the 11:41:49
16 record at 11:41 a.m. 11:41:51
17 (Recess taken.) 11:41:51
18 (Plaintiff's Exhibit 915 was marked.) 11:52:45
19 THE VIDEOGRAPHER: Back on the record. 11:52:53
20 This the beginning of DVD No. 3, and the time 11:52:56
21 is 11:52 a.m. 11:52:58
22 BY MR. VERHOEVEN: 11:52:58
23 Q. By May of 2017, were you aware that some 11:53:07
24 investors of Uber wanted Mr. Kalanick to resign as 11:53:13
25 CEO? 11:53:14

1	A. By May . . .	11:53:27
2	Q. That's three months ago.	11:53:30
3	A. Yeah. I'm just trying to remember when some	11:53:33
4	of those conversations first started.	11:53:36
5	I can't -- I can't be specific about whether	11:53:40
6	by May. Certainly around that time frame people had	11:53:46
7	started to ask that question.	11:53:48
8	Q. And who are those people?	11:53:56
9	A. Well, a lot of -- I think many journalists	11:53:59
10	had begun to ask that question. So you'd see	11:54:02
11	editorials in the Financial Times, New York Times,	11:54:08
12	like there's a lot of -- I don't know exactly when	11:54:10
13	they ran. I think they were around that time frame.	11:54:12
14	But I don't -- I don't recall a specific May	11:54:20
15	conversation with a specific investor about it.	11:54:24
16	Q. Well, do you recall that you -- at around	11:54:27
17	that time, not specific date or anything -- that you	11:54:31
18	had conversations with investors on that topic?	11:54:34
19	A. It's possible. I mean, I -- it may even be	11:54:40
20	probable. I just don't -- I don't -- I don't know	11:54:41
21	about at that moment in time who I -- exactly who I	11:54:44
22	talked to about that topic.	11:54:46
23	Q. What do you remember about first -- to the	11:54:49
24	extent that you can make it chronological, can you	11:54:54
25	tell me what you remember first about that topic?	11:54:58

1 A. Well, there are a number of instances that 11:55:00
2 had happened in the company in 2017, and that had led 11:55:05
3 to a general perception in the public that that might 11:55:09
4 be the right answer, which -- 11:55:11

5 Q. Okay.

6 A. -- which, as I mentioned, was discussed in 11:55:16
7 some of the leading financial publications around the 11:55:19
8 globe. 11:55:20

9 And naturally that's going to cause -- you 11:55:23
10 know when something has that much open discussion, 11:55:27
11 it's going to lead to other people discussing what the 11:55:31
12 right action is one way or another in terms of 11:55:34
13 ensuring the long-term health and success of the 11:55:39
14 organization. 11:55:40

15 Q. Okay. And after these articles came out, 11:55:44
16 were you contacted by any investors about the subject? 11:55:48

17 A. I was contacted frequently by investors about 11:55:54
18 the state of the overall company. And as the company 11:55:58
19 ran into these multiple issues, the frequency of those 11:56:05
20 inquiries would go up. And it -- it wasn't uncommon 11:56:10
21 for that question to come up around that time frame, 11:56:14
22 but certainly a little bit later for sure. 11:56:17

23 Q. Okay. Maybe June? 11:56:19

24 A. Yeah. 11:56:19

25 Q. Okay. 11:56:20

1 A. Yeah.

2 Q. And did those investors have the view that 11:56:26

3 Mr. Kalanick should not -- should be removed from the 11:56:28

4 position of CEO? 11:56:30

5 A. Some. Some did. Some -- not all. 11:56:34

6 Q. Okay. Do you remember any investors that did 11:56:36

7 have that view? 11:56:38

8 A. Certainly the investors that signed on to the 11:56:45

9 letter that was presented to Mr. Kalanick in Chicago 11:56:47

10 came to that point of view. 11:56:50

11 Q. Okay. Any others that you remember? 11:56:52

12 A. Yes, there are others. 11:57:09

13 Q. Can you remember them? 11:57:11

14 MR. FLUMENBAUM: If it's a nonprivileged 11:57:16

15 conversation. We'll -- we'll invoke whatever the 11:57:20

16 confidentiality is in terms of the release of the 11:57:25

17 transcript. 11:57:25

18 But if it's nonprivileged, I believe you have 11:57:28

19 to respond to that. 11:57:31

20 THE WITNESS: There were -- there were 11:57:40

21 other -- well, there -- Uber has some investors that 11:57:44

22 are -- typically invest in public companies, and so 11:57:51

23 they're more mutual funds, that kind of thing. 11:57:54

24 And several of them had expressed that - 11:57:58

25 either -- either that they were certain that that was 11:58:00

1 the right answer or they were questioning whether that 11:58:03
2 was the right answer. And I heard that, also, from 11:58:07
3 some of the seed investors. 11:58:09
4 BY MR. VERHOEVEN: 11:58:09
5 Q. Which mutual funds? 11:58:15
6 This is all protected. It's not going to go 11:58:22
7 anywhere. 11:58:23
8 THE WITNESS: (Directed to deponent's counsel:)
9 What does that mean, it would be redacted? 11:58:26
10 MR. VERHOEVEN: No. It's -- by court order it 11:58:28
11 cannot be disclosed. 11:58:30
12 MR. BRILLE: Is it necessary to disclose, Charlie? 11:58:31
13 I'll defer to you. I'm just saying it -- it seems 11:58:33
14 very highly sensitive. 11:58:35
15 MR. VERHOEVEN: I'm asking the question. 11:58:35
16 THE WITNESS: It is sensitive. 11:58:37
17 MR. VERHOEVEN: I'm asking the question. 11:58:38
18 MR. FLUMENBAUM: We will make sure that this is 11:58:42
19 totally redacted. 11:58:45
20 MR. BRILLE: Yes. We will rule it the highest 11:58:46
21 protection available under the court order. 11:58:49
22 THE WITNESS: Glade Brook, Wellington, Capital 11:58:53
23 Group. 11:58:54
24 On the seed side, David Sacks, Antonio 11:59:03
25 Gracias. 11:59:09

1 I don't know that it's limited to that, but 11:59:11

2 those are the ones that come to mind. 11:59:13

3 BY MR. VERHOEVEN: 11:59:13

4 Q. Can you think of anybody else? 11:59:15

5 MR. FLUMENBAUM: Other than the ones you -- 11:59:22

6 THE WITNESS: Yeah. All the ones on -- 11:59:24

7 MR. VERHOEVEN: Yeah. I mean, I'm just probing 11:59:27

8 his recollection. 11:59:28

9 MR. FLUMENBAUM: Right. But he gave you two. He 11:59:29

10 gave you the group that signed the letter. 11:59:30

11 MR. VERHOEVEN: I know what he gave me. 11:59:32

12 MR. FLUMENBAUM: Okay. I just want to make sure. 11:59:33

13 THE WITNESS: Fidelity is on the letter, but they 11:59:36

14 were of that opinion. 11:59:37

15 BY MR. VERHOEVEN: 11:59:37

16 Q. Can you recall any others? 11:59:45

17 A. I'm trying. I -- that's all -- that's all I 11:59:56

18 remember at this time. 11:59:56

19 Q. Was one of the reasons why these folks were 12:00:10

20 in favor of removing Mr. Kalanick from his position as 12:00:15

21 CEO the Waymo litigation? 12:00:18

22 A. Yes. 12:00:19

23 Q. Did you hear that from multiple investors? 12:00:29

24 A. The letter that was presented that was 12:00:41

25 authored by five investor groups included that 12:00:45

1	comment. So I guess the de facto answer is yes,	12:00:49
2	because there were multiple parties to that letter,	12:00:52
3	and everyone signed on to that letter.	12:00:54
4	Q. That was a significant reason for the	12:00:57
5	conclusion in that letter that Mr. Kalanick should be	12:00:59
6	removed from CEO?	12:01:01
7	MR. FLUMENBAUM: Objection as to form.	12:01:03
8	THE WITNESS: It's -- it's significant and one of	12:01:06
9	many.	12:01:08
10	BY MR. VERHOEVEN:	12:01:08
11	Q. You felt that the way that the acquisition	12:01:18
12	was handled was an example of company mismanagement,	12:01:23
13	right?	12:01:24
14	MR. BRILLE: Object to form.	12:01:31
15	MR. FLUMENBAUM: You've -- this is in -- you've	12:01:31
16	already -- we already covered this area before. I	12:01:36
17	mean . . .	
18	MR. VERHOEVEN: Are you instructing him?	12:01:37
19	MR. FLUMENBAUM: I -- I'm not -- I'm not -- are	12:01:39
20	you trying to get privileged communications? I'm	12:01:42
21	not . . .	
22	MR. VERHOEVEN: No. Can he answer?	12:01:45
23	MR. FLUMENBAUM: You can answer it if you . . .	12:01:47
24	THE WITNESS: Yes. I -- I believe it had	12:01:49
25	the -- had there been more disclosures around the	12:01:55

1 acquisition, that we may not have done the 12:01:58
2 acquisition. And I believe that had we terminated 12:02:01
3 Anthony, upon him pleading the Fifth, that that would 12:02:05
4 have been a much better interest for the company as a 12:02:08
5 whole. 12:02:09
6 BY MR. VERHOEVEN: 12:02:09
7 Q. Did other investors share that view? 12:02:13
8 A. I don't recall having that specific 12:02:17
9 conversation about that specific topic with people 12:02:20
10 outside of the group. 12:02:22
11 Q. The group that signed the letter? 12:02:24
12 A. The group that signed the letter. The group 12:02:27
13 that signed the letter authored it and bought into all 12:02:30
14 of the points of view that are expressed in the 12:02:32
15 letter. 12:02:32
16 MR. VERHOEVEN: Let's get the June 20 letter. 12:02:41
17 (Plaintiff's Exhibit 916 was marked.) 12:03:08
18 THE REPORTER: This is marked Exhibit 916. There 12:03:08
19 was a prior exhibit marked before we went back on the
20 record.
21 MR. VERHOEVEN: Yeah. Let's do 915 before we go 12:03:11
22 to this. I forgot about that one. 12:03:12
23 BY MR. VERHOEVEN:
24 Q. So put that aside, Mr. Gurley. 12:03:15
25 A. Oh, put that aside? 12:03:18

1 MR. FLUMENBAUM: This is 916? 12:03:20

2 BY MR. VERHOEVEN: 12:03:20

3 Q. Yes. But just one housekeeping matter here.

4 Take a look at 915. 12:03:34

5 I didn't hand it out, did I? 12:03:37

6 A. No, sir.

7 Q. Can you identify Exhibit 915? 12:03:50

8 A. 915, board minutes from May 25th of Uber 12:03:55

9 Technologies. 12:03:55

10 Q. And you attended this meeting? 12:03:57

11 A. Yes. 12:04:00

12 Q. What happened at this meeting? 12:04:04

13 A. My -- 12:04:14

14 Q. The last meeting, just for your information, 12:04:16

15 was May 22? 12:04:18

16 A. Yeah. My -- my -- my best recollection is 12:04:20

17 this is the meeting that Travis recommended 12:04:21

18 terminating Anthony Levandowski. 12:04:24

19 Q. Under Item 1, the only thing that's not 12:04:33

20 redacted by counsel for Waymo says: 12:04:37

21 "The board discussed various employees and 12:04:40

22 certain contractual matters related to the Waymo 12:04:42

23 litigation." 12:04:43

24 Do you see that? 12:04:44

25 A. Did you mean counsel of Uber? 12:04:46

1 Q. Yeah. What did I say? Counsel for Uber. 12:04:50

2 A. Okay. What's the question? 12:04:52

3 Q. It says here: 12:04:53

4 "The board discussed various employees and 12:04:55

5 certain contractual matters related to the Waymo 12:04:58

6 litigation." 12:04:59

7 Do you see that? 12:05:00

8 A. Um-hum. 12:05:00

9 Q. What are the -- what is this reference to 12:05:04

10 "certain contractual matters"? 12:05:06

11 MR. FLUMENBAUM: Again, to the extent that your 12:05:09

12 testimony would involve privileged communications -- 12:05:12

13 THE WITNESS: Right.

14 MR. FLUMENBAUM: -- you're not at liberty to 12:05:14

15 discuss that. 12:05:15

16 THE WITNESS: I would say this specifically 12:05:19

17 related to legal discussions that was privileged. 12:05:24

18 MR. VERHOEVEN: Uber's counsel didn't redact this 12:05:26

19 sentence. 12:05:27

20 MR. BRILLE: That's because the sentence itself is 12:05:32

21 not privileged. But perhaps conversations that relate 12:05:33

22 to these topics may be privileged. 12:05:36

23 BY MR. VERHOEVEN: 12:05:36

24 Q. Was there discussion about how a decision to 12:05:40

25 terminate may affect various employees within Uber? 12:05:44

1 A. I don't know if there was a discussion on 12:05:53
2 this date at that moment in time. Eventually there 12:05:56
3 were discussions about that. 12:05:58

4 Q. And can you summarize those for me? 12:06:01

5 MR. BRILLE: And I would just say, Mr. Gurley, to 12:06:04
6 the extent that they don't include legal advice. 12:06:12

7 THE WITNESS: Yeah. Just a general concern about 12:06:14
8 retention, on the topic we had talked about before. 12:06:17

9 There were questions about whether certain 12:06:18
10 employees would feel like their individual packages 12:06:24
11 would be impacted by this -- by this action, and would 12:06:29
12 that then affect retention. 12:06:31

13 BY MR. VERHOEVEN: 12:06:31

14 Q. And is that because their individual packages 12:06:34
15 were conditioned on milestones? 12:06:37

16 A. It related to that, yes. 12:06:39

17 Q. And so the gist of it would be if 12:06:42
18 Mr. Levandowski is gone, they're not going to make 12:06:45
19 their milestones -- 12:06:46

20 A. Might that impact, yes. 12:06:48

21 Q. Yes. Let me finish the question, though. 12:06:50

22 A. Okay. 12:06:50

23 Q. So the gist of the discussion was if 12:06:52
24 Mr. Levandowski is gone, that might impact the 12:06:54
25 milestones; and, hence, the compensation of these 12:06:57

1 employees? 12:06:58

2 A. Yes. And I don't -- I just want -- yes, but 12:07:00

3 I want to clarify. 12:07:02

4 I remember that being a general discussion at 12:07:04

5 some point in time. I can't ascertain that that's the 12:07:07

6 exact one referenced on that date. 12:07:09

7 Q. Well, this sentence concerns that subject 12:07:11

8 matter; right? 12:07:12

9 A. Potentially. 12:07:15

10 Q. Do you have any reason to believe that it 12:07:18

11 wasn't on the date that -- 12:07:19

12 A. No. 12:07:21

13 Q. -- the decision was made to terminate 12:07:21

14 Mr. Levandowski? 12:07:22

15 A. No. 12:07:22

16 Q. Okay. All right. 12:07:27

17 Now, let's go to 915. 12:07:29

18 MR. FLUMENBAUM: 916? 12:07:31

19 MR. VERHOEVEN: 916. 12:07:33

20 THE WITNESS: Yeah. 12:07:34

21 BY MR. VERHOEVEN: 12:07:34

22 Q. Can you identify this document? 12:07:37

23 A. Yeah. This was a letter that was authored by 12:07:41

24 the investors in Uber that are mentioned in the first 12:07:45

25 paragraph, first sentence, to express their point of 12:07:50

1 view to Travis about a number of issues that had been 12:07:55
2 developing over the course of 2017. 12:07:58

3 MR. BRILLE: I'm going to note my objection to 12:07:59
4 this exhibit, to the extent it is unsigned. And it is 12:08:03
5 unclear to me, at least, what this document is. 12:08:06

6 THE WITNESS: Okay. 12:08:09

7 BY MR. VERHOEVEN: 12:08:09

8 Q. Did someone in this group send this exhibit 12:08:19
9 to Mr. Kalanick? 12:08:21

10 A. It was presented to him by two of the -- two 12:08:25
11 of my partners at Benchmark. 12:08:28

12 Q. Which partners? 12:08:29

13 A. Matt Cohler and Peter Fenton. 12:08:32

14 Q. Was it presented in person? 12:08:38

15 A. Yes. 12:08:38

16 Q. Where? 12:08:40

17 A. In a hotel in Chicago. 12:08:42

18 Q. Did Mr. Kalanick have any advance indication 12:08:51
19 that this was going to be presented to him? 12:08:57

20 A. There had been a number of one-on-one 12:09:06
21 conversations that related to trying to find solutions 12:09:13
22 to move past some of the many issues outlined here. 12:09:17

23 Some of that related to a COO search. 12:09:20

24 Some of those related to various other 12:09:24
25 alternatives, like coaching and that kind of thing. 12:09:28

1 Some of those had been had, not just with me, 12:09:32
2 but with Matt and Trav- -- and Travis. 12:09:35
3 But there was not a -- there was nothing that 12:09:42
4 said, "Hey, we're bringing" -- there was not a 12:09:45
5 communication that said, "Hey, we're about to bring 12:09:49
6 you this letter." 12:09:50
7 It was, like, "We need to desperately sit 12:09:53
8 down and talk," and then the letter was presented. 12:09:56
9 Q. Were you aware of the contents of this letter 12:09:58
10 before it was presented? 12:10:00
11 A. Yes. 12:10:00
12 Q. Did you review it? 12:10:01
13 A. Yes. 12:10:01
14 Q. In the third paragraph of Exhibit 916 it 12:10:06
15 starts with: 12:10:06
16 "A series of recent revelations, however, 12:10:10
17 continues to affect Uber's business and put the 12:10:13
18 mission at risk." 12:10:15
19 Do you see that? 12:10:16
20 A. Um-hum. 12:10:17
21 Q. And later in the paragraph there's a 12:10:18
22 reference to the "ongoing Waymo trade secret 12:10:20
23 litigation." 12:10:23
24 Do you see that? 12:10:24
25 A. Correct. Yes. 12:10:24

1 Q. Is that one of the series of revelations 12:10:27
2 referred to in the first sentence? 12:10:30
3 A. Yes. 12:10:30
4 Q. So the litigation in your view, or in the 12:10:37
5 view of the groups referenced in this letter, put 12:10:42
6 Uber's mission at risk; fair? 12:10:46
7 MR. FLUMENBAUM: The letter speaks for itself. 12:10:50
8 THE WITNESS: I would -- I would just say that the 12:10:53
9 totality of the events is what's referenced in the 12:10:57
10 first sentence. 12:10:59
11 You and I had already discussed that -- right 12:11:01
12 before the break -- the thing that -- specifically 12:11:04
13 with regard to Waymo -- that -- that could have been 12:11:08
14 avoided, is -- could have not done the deal and you 12:11:13
15 could have made that determination -- termination 12:11:14
16 effort sooner, both of which I think would have been 12:11:19
17 way better for the company, in light of where we stand 12:11:22
18 today. 12:11:23
19 And so -- 12:11:24
20 BY MR. VERHOEVEN: 12:11:24
21 Q. In addition -- 12:11:25
22 MR. BRILLE: Wait, wait.
23 MR. FLUMENBAUM: Hold it. Let him finish, please. 12:11:27
24 You interrupted him. 12:11:29
25 Go ahead, Bill. 12:11:30

1 THE WITNESS: Anyway, so my recollection and view 12:11:33
2 of the point of that sentence relates to those 12:11:35
3 decisions that were made by him. 12:11:38
4 BY MR. VERHOEVEN: 12:11:38
5 Q. In addition to the "you could have" that you 12:11:41
6 just gave, another "you could have" is you could have 12:11:44
7 disclosed the diligence report, right, before the 12:11:47
8 acquisition? 12:11:48
9 A. Sure. Yes, that is true. 12:11:49
10 Q. Okay. The last sentence of the paragraph 12:11:51
11 says: 12:11:51
12 "The ongoing Waymo trade secret litigation," 12:11:54
13 and then it refers to it as "extremely serious." 12:11:57
14 Do you see that? 12:11:59
15 A. Yes. 12:11:59
16 Q. What did you mean by -- or what did Benchmark 12:12:04
17 mean by "extremely serious"? 12:12:07
18 A. Well, this was authored by the group. So -- 12:12:10
19 and edited by the group. So it was the point of view 12:12:15
20 from everybody. 12:12:15
21 I -- I think I'm already on record in this 12:12:18
22 deposition as saying that I take, you know, litigation 12:12:19
23 from a company like the size of Google very seriously. 12:12:24
24 So I think this is consistent with that. 12:12:27
25 Q. Any other explanation of -- 12:12:29

1 A. No. 12:12:30

2 Q. Did the group believe that the allegations 12:12:43

3 were extremely serious? 12:12:48

4 MR. BRILLE: Object to form. 12:12:49

5 MR. FLUMENBAUM: Objection as to form. 12:12:56

6 THE WITNESS: I -- I don't recall a discussion 12:12:58

7 specifically about whether the allegations are -- were 12:13:01

8 serious. 12:13:02

9 I think any litigation of this size or scope 12:13:06

10 is obviously -- if it could be avoided it would be 12:13:09

11 much better for the company. We'd all be better off 12:13:12

12 if -- if we weren't focused on this and could be 12:13:16

13 focused on serving the customers. 12:13:21

14 BY MR. VERHOEVEN: 12:13:21

15 Q. The next paragraph, take a look at it. 12:13:23

16 A. Yep. 12:13:25

17 Q. The -- in the middle of that paragraph 12:13:29

18 there's a sentence that starts with "The public 12:13:32

19 perception." 12:13:32

20 Do you see that? 12:13:34

21 A. Um-hum. 12:13:34

22 Q. I'll read it into the record. 12:13:36

23 "The public perception is that Uber 12:13:38

24 fundamentally lacks ethical and moral values." 12:13:42

25 Do you see that? 12:13:44

1 A. Yep. 12:13:45

2 Q. And your understanding that this perception 12:13:50

3 of lacking -- withdrawn. 12:13:54

4 This reference to "lacks ethical and moral 12:13:58

5 values" in this sentence is, in part, a reference to 12:14:01

6 the Waymo litigation, correct? 12:14:03

7 MR. BRILLE: Object to form. 12:14:07

8 THE WITNESS: I don't think it's a specific 12:14:08

9 reflection on that. I think there -- as -- there are 12:14:14

10 numerous other issues that had been going on in the 12:14:18

11 company. 12:14:18

12 And I think if you read those articles that I 12:14:21

13 mentioned that were calling for the board to ask him 12:14:25

14 to resign, that created this public perception, you 12:14:31

15 would see much more references around that to other 12:14:34

16 things. 12:14:36

17 BY MR. VERHOEVEN: 12:14:36

18 Q. Based on what you know now, including your 12:14:39

19 review of the diligence report, don't you believe that 12:14:45

20 the conduct of Mr. Kalanick and his team, with respect 12:14:50

21 to the Otto acquisition, reflected a lack of ethical 12:14:58

22 and moral values? 12:15:01

23 MR. BRILLE: Object to form. 12:15:08

24 THE WITNESS: I don't know. For me, that 12:15:12

25 particular thing is really a question of materiality 12:15:15

1 and whether you feel a responsibility of disclosure, 12:15:22
2 which gets into understanding the criticality of 12:15:28
3 something, whether or not you're withholding 12:15:32
4 information that could be critical in that 12:15:35
5 decision-making process. 12:15:36

6 I can't speak to the reasoning for them 12:15:42
7 making those decisions; and, therefore, then apply 12:15:45
8 some type of label like this. 12:15:49

9 I certainly think, as is expressed later 12:15:52
10 in -- in our legal action, that it -- that it crossed 12:15:56
11 a line of violating fraud and fiduciary duty. 12:16:02

12 And so to the extent that you want to wrap 12:16:04
13 those into those words, I guess you could, but I 12:16:07
14 don't -- I -- I wouldn't tie that specifically to that 12:16:11
15 label. 12:16:11

16 That's not what we were thinking about when 12:16:13
17 we wrote that. This says the "public perception is," 12:16:17
18 and I think that public perception, which is well 12:16:20
19 documented in a bunch of articles, was driven more by 12:16:23
20 other activities. 12:16:24

21 BY MR. VERHOEVEN: 12:16:24

22 Q. You believe that Mr. Kalanick committed fraud 12:16:26
23 on the board of directors by failing to disclose the 12:16:30
24 facts underlying the Otto acquisition, right? 12:16:34

25 A. Yes. 12:16:35

1 MR. BRILLE: Object to form. 12:16:36

2 THE WITNESS: Yes. 12:16:37

3 BY MR. VERHOEVEN: 12:16:37

4 Q. And you would agree that that would not be 12:16:39

5 ethical or moral, to commit such a fraud? 12:16:42

6 MR. BRILLE: Same objection. 12:16:44

7 THE WITNESS: I think that's a fair statement. 12:16:45

8 This sentence talks about the public perception of 12:16:48

9 Uber, and I don't think that relates to that action 12:16:51

10 because the public doesn't have a perception of that 12:16:54

11 act. 12:16:56

12 THE REPORTER: You have microphones on, gentlemen. 12:17:28

13 I just wanted to let you know.

14 MR. VERHOEVEN: I was just asking if there was

15 anything else in the letter.

16 BY MR. VERHOEVEN: 12:17:28

17 Q. You agree with the statements in this letter; 12:17:32

18 right? 12:17:32

19 A. I do. 12:17:33

20 Q. Do you have any knowledge of the substance of 12:17:39

21 the conversation in Chicago between your two partners 12:17:42

22 and Mr. Kalanick? 12:17:45

23 A. Only what I heard secondhand, yes. I wasn't 12:17:51

24 present -- I wasn't dialed in. 12:17:56

25 Q. Did your two partners report to you what 12:18:00

1 happened at the meeting? 12:18:01

2 A. Yes.

3 Q. What did they say? 12:18:03

4 A. I'll start at a high level. Like there was a 12:18:10

5 lot of conversations back and forth. 12:18:12

6 There were discussions of -- you know, there 12:18:24

7 was a lot of discussion about the details of these 12:18:27

8 recommendations and how they would manifest themselves 12:18:30

9 in an agreement. 12:18:31

10 There were edits of that back and forth in a 12:18:36

11 separate document that he eventually signed. 12:18:41

12 And there are questions about disclosures, 12:18:47

13 what we would do or not do if he agreed to these 12:18:52

14 things, or refrain from doing. 12:19:00

15 That's the general recollection. 12:19:06

16 Q. And that all happened at the one meeting? 12:19:09

17 A. I think there were a series of meetings over 12:19:11

18 an extended period of time. 12:19:13

19 Q. Did -- did Mr. Kalanick agree to resign as 12:19:18

20 CEO as part of that first meeting? 12:19:22

21 A. I don't -- when you say "first meeting," I 12:19:29

22 think they met and -- and broke up and met and broke 12:19:35

23 up and met and broke up several times. 12:19:36

24 So I don't have enough information to know 12:19:40

25 whether he had agreed on that one point in the very 12:19:43

1 first meeting or not. I just know that -- where they 12:19:46
2 got to by the end of the day. 12:19:47
3 Q. Was it announced to the public that he was 12:19:50
4 resigning that day? 12:19:52
5 A. I don't believe there was an official 12:19:53
6 announcement that day. 12:19:56
7 Q. What about the following day? 12:19:59
8 A. I don't know when -- I don't have a specific 12:20:05
9 date on when Uber announced this. 12:20:08
10 (Discussion off the record.) 12:20:22
11 BY MR. VERHOEVEN: 12:20:22
12 Q. All right. I'm going to mark as Exhibit 917 12:20:25
13 a Benchmark document from your firm that we just 12:20:30
14 received this morning. 12:20:31
15 A. Okay. 12:20:32
16 Q. For the record, it's Benchmark-Waymo-39 12:20:35
17 through 105. 12:20:43
18 (Plaintiff's Exhibit 917 was marked.) 12:21:01
19 BY MR. VERHOEVEN: 12:21:01
20 Q. It's a compilation of documents, it appears, 12:21:04
21 and it's got a -- on the front page, if you look at 12:21:10
22 the top right -- 12:21:11
23 MR. FLUMENBAUM: May I have a copy, please? 12:21:14
24 MR. VERHOEVEN: Do we have copies? 12:21:16
25 MR. FLUMENBAUM: Thank you. 12:21:18

1 MR. VERHOEVEN: I think that's all we have. 12:21:20

2 Hey, we got them by e-mail this morning. If 12:21:28

3 you have a com- -- if you have a complaint you should 12:21:28

4 talk to the person who produced it. 12:21:32

5 MR. FLUMENBAUM: Well, just so the record is 12:21:35

6 clear, we produced it by e-mail at the request of 12:21:39

7 Waymo and -- 12:21:42

8 MR. VERHOEVEN: While we're here in 12:21:44

9 Morrison & Foerster. 12:21:45

10 MR. FLUMENBAUM: The subpoena was returnable today 12:21:48

11 at -- it was returnable today at your -- at your 12:21:51

12 offices. 12:21:52

13 We produced it by e-mail at your request in a 12:21:56

14 timely fashion, and these documents are part of, I 12:22:02

15 believe, Exhibit A. It's all part of the public 12:22:04

16 filing in Delaware, so it's not something that you 12:22:09

17 didn't have before. 12:22:12

18 MR. VERHOEVEN: Okay. So you'll represent this is 12:22:13

19 part of a public filing in Delaware? 12:22:16

20 MR. FLUMENBAUM: I believe it was. I have to take 12:22:18

21 a look at it, but I believe it was. I didn't check on 12:22:22

22 this particular one, but it's my understanding. 12:22:26

23 BY MR. VERHOEVEN: 12:22:26

24 Q. Mr. Gurley, do you have an understanding of 12:22:30

25 what your counsel referenced to with respect to this 12:22:33

1 public filing in Delaware? 12:22:37

2 What's he talking about? 12:22:38

3 A. I presume he's talking about the lawsuit that 12:22:43

4 was filed between Benchmark and Mr. Kalanick. 12:22:47

5 Q. Okay. So with the understanding that these 12:22:49

6 are exhibits in connection with that suit? 12:22:53

7 A. I --

8 Q. That's what counsel is representing; right? 12:22:56

9 A. Okay. 12:22:58

10 MR. VERHOEVEN: Are you representing that, 12:23:00

11 Counsel? 12:23:01

12 MR. FLUMENBAUM: I believe that that's what this 12:23:03

13 reflects. 12:23:04

14 BY MR. VERHOEVEN: 12:23:04

15 Q. Okay. Let's turn to Exhibit A. 12:23:06

16 A. Okay.

17 Q. And my first question is: Can you identify 12:23:13

18 this document? 12:23:14

19 A. I believe this is the letter that was signed 12:23:19

20 with -- by Travis at the end of the day of that 12:23:22

21 meeting. 12:23:23

22 Q. Okay. So you had some negotiation back and 12:23:29

23 forth and then this got signed? 12:23:31

24 A. Correct. 12:23:31

25 Q. So does that refresh your recollection that 12:23:34

1 he resigned on the same day as the meeting? 12:23:40

2 A. Yeah, yeah. I -- I wasn't trying to say he 12:23:42

3 didn't. You -- you had said in the first meeting, and 12:23:45

4 they met and broke, just like we've been doing, met 12:23:49

5 and broke. So I was just -- it was just a question of 12:23:51

6 the definition of "first." 12:23:52

7 So it did happen all in one day. 12:23:55

8 Q. Okay.

9 A. It was over a series of long -- many hours, I 12:23:59

10 think. 12:23:59

11 Q. Okay. And here he says, second-to-the-last 12:24:00

12 paragraph: 12:24:02

13 "I will make a public announcement of the 12:24:04

14 foregoing no later than 5:00 p.m. PDT Thursday, June 12:24:08

15 22, 2017."

16 Does that refresh your recollection as to 12:24:13

17 when it was announced? 12:24:15

18 A. Well, this was his commitment to announce. I 12:24:18

19 don't know exactly when it was announced, which was 12:24:21

20 your question.

21 Q. You don't have any reason to believe it 12:24:24

22 wasn't announced, do you? 12:24:25

23 A. It was clearly announced. 12:24:28

24 MR. VERHOEVEN: What number was that? 12:24:40

25 THE REPORTER: That one was 17, 917. 12:24:43

1 MR. VERHOEVEN: All right. Coming up to the end 12:25:04
2 here right on schedule. 12:25:12
3 Let's mark as 917 -- 12:25:15
4 MR. FLUMENBAUM: 918. 12:25:16
5 MR. VERHOEVEN: -- 918 a draft of a verified 12:25:23
6 complaint, Benchmark Capital Partners versus Travis 12:25:31
7 Kalanick and Uber Technologies. 12:25:34
8 (Plaintiff's Exhibit 918 was marked.) 12:25:43
9 MR. FLUMENBAUM: I believe you said draft, as 12:25:45
10 opposed to a verified complaint. 12:25:49
11 MR. VERHOEVEN: Let's see. Was it signed? It has 12:25:56
12 E-signatures on it. So you'll represent this was 12:26:00
13 filed? 12:26:00
14 MR. FLUMENBAUM: I believe it was. That's my 12:26:03
15 understanding of what was produced. 12:26:04
16 MR. VERHOEVEN: Okay. So with that clarification, 12:26:06
17 can you identify Exhibit 918? 12:26:09
18 MR. FLUMENBAUM: Can I have a copy, please? 12:26:11
19 Thank you. 12:26:13
20 THE WITNESS: I believe this is the lawsuit we 12:26:24
21 just discussed. 12:26:26
22 BY MR. VERHOEVEN: 12:26:26
23 Q. Did you approve the filing of this lawsuit? 12:26:28
24 A. I did. 12:26:29
25 Q. Did you review the complaint before it was 12:26:30

1 filed? 12:26:31

2 A. Yes. 12:26:31

3 Q. Do you agree with what the statements are in 12:26:34

4 the complaint? 12:26:35

5 A. I do. 12:26:35

6 Q. I'd direct your attention to page 5 of -- I'm 12:26:55

7 sorry -- to paragraph 5 of the complaint. 12:27:01

8 Do you see it says: 12:27:21

9 "Kalanick intentionally concealed and failed 12:27:29

10 to disclose his gross mismanagement and other 12:27:32

11 misconduct at Uber." 12:27:34

12 Do you see that? 12:27:38

13 A. Yes. 12:27:40

14 Q. And then it continues: 12:27:41

15 "These matters included, among others, 12:27:45

16 Kalanick's personal involvement in causing Uber to 12:27:49

17 acquire a self-driving vehicle start-up that, 12:27:53

18 according to a confidential report, not disclosed to 12:27:56

19 Benchmark at the time (the 'Stroz report'), allegedly 12:28:04

20 harbored trade secrets stolen from a competitor." 12:28:08

21 Do you see that? 12:28:09

22 A. Yes. 12:28:09

23 Q. And that's a reference to the Waymo 12:28:12

24 litigation and the facts that -- let me rephrase. 12:28:22

25 That's referring to the Otto acquisition? 12:28:27

1 A. Correct. 12:28:27

2 MR. FLUMENBAUM: Objection as to form. 12:28:30

3 MR. BRILLE: Objection as to form. 12:28:31

4 THE WITNESS: Sorry. 12:28:31

5 MR. FLUMENBAUM: You can answer. 12:28:32

6 BY MR. VERHOEVEN: 12:28:32

7 Q. And Mr. Kalanick's personal conduct, with 12:28:38

8 respect to the Otto acquisition, constituted gross 12:28:44

9 mismanagement and misconduct. 12:28:45

10 That's what you're saying here; right? 12:28:47

11 A. Yes. 12:28:47

12 Q. And the specific actions that this is 12:28:56

13 referencing to that Mr. Kalanick undertook, are those 12:29:01

14 the actions you've already testified to or is there 12:29:03

15 anything in addition to that? 12:29:05

16 A. I think we've already discussed it. 12:29:09

17 Q. Okay. I direct your attention to paragraph 12:29:31

18 6. 12:29:45

19 And the second -- take a second and review 12:29:56

20 that. 12:29:57

21 A. (Witness reviews document.)

22 Q. Do you see at the start it says: 12:30:12

23 "Kalanick knew Benchmark never would have 12:30:14

24 approved," and then it goes on, "if Benchmark had 12:30:20

25 known the truth about Kalanick's prior conduct." 12:30:24

1 Do you see that? 12:30:24

2 A. Yes. 12:30:25

3 Q. And this refers, in part, to your prior 12:30:30

4 testimony that if Benchmark had known about the 12:30:35

5 information contained in the Stroz report, it would 12:30:37

6 never have agreed to this amendment, right? 12:30:45

7 MR. BRILLE: Object to the form. 12:30:46

8 MR. FLUMENBAUM: Object to the form. 12:30:47

9 You can answer.

10 BY MR. VERHOEVEN:

11 Q. Well, you're correct. Let me rephrase. 12:30:51

12 This refers to your prior testimony that 12:30:54

13 Benchmark never would have approved the transaction 12:30:56

14 had it been aware of the Stroz report, correct? 12:31:02

15 MR. BRILLE: Same objection. 12:31:03

16 MR. FLUMENBAUM: Objection as to form, but you 12:31:05

17 may -- 12:31:06

18 THE WITNESS: The only clarification I would make 12:31:08

19 is that there are many other matters, also. 12:31:10

20 BY MR. VERHOEVEN:

21 Q. Yeah.

22 A. But this is one of those. Yes, correct. 12:31:14

23 Q. But it's your contention that Benchmark would 12:31:18

24 not have approved the amended certificate of 12:31:18

25 incorporation referenced here, or the voting 12:31:22

1 agreement, if it had known the real facts behind the 12:31:25
2 Otto acquisition, isn't it? 12:31:28
3 MR. BRILLE: Object to form. 12:31:29
4 MR. FLUMENBAUM: You may answer. 12:31:30
5 THE WITNESS: Along with other things. But, yes. 12:31:32
6 That was one of -- of many other things. 12:31:36
7 BY MR. VERHOEVEN: 12:31:36
8 Q. The next sentence says: 12:31:46
9 "Kalanick also understood that these matters, 12:31:49
10 once revealed, would likely force him to resign as 12:31:53
11 Uber's CEO." 12:31:54
12 Do you see that? 12:31:55
13 A. I do. 12:31:56
14 Q. And one of those matters is the facts 12:32:00
15 underlying the Otto acquisition, correct? 12:32:02
16 MR. BRILLE: Object to form. 12:32:04
17 MR. FLUMENBAUM: You may answer. 12:32:05
18 THE WITNESS: Yes, one of those facts. 12:32:08
19 BY MR. VERHOEVEN: 12:32:08
20 Q. And throughout this sentence, if it refers to 12:32:21
21 these matters, your answer would be the same, that 12:32:24
22 included in the matters would be the Otto transaction? 12:32:28
23 MR. FLUMENBAUM: Objection as to form. But . . . 12:32:32
24 BY MR. VERHOEVEN:
25 Q. I mean, you can see the next -- okay. I was

1	trying to shorten it.	12:32:35
2	The next sentence says:	12:32:36
3	"Kalanick, therefore, knowingly concealed	12:32:38
4	these matters from Benchmark and Uber's board to	12:32:43
5	obtain, for his personal benefit . . ."	12:32:47
6	And then it goes on. Do you see that?	12:32:49
7	A. Yes.	12:32:51
8	Q. "These matters" reference, in part, the Otto	12:32:55
9	acquisition?	12:32:56
10	A. In part.	12:32:57
11	Q. And the testimony you gave about it earlier	12:32:59
12	today?	12:33:00
13	A. That is correct.	12:33:00
14	Q. Okay. Why would the -- in your view, why	12:33:12
15	would the facts underlying the Otto acquisition, if	12:33:16
16	known by Benchmark and the board, likely have forced	12:33:21
17	Travis Kalanick to resign?	12:33:24
18	MR. BRILLE: Object to form.	12:33:27
19	MR. FLUMENBAUM: Objection to form. But again,	12:33:28
20	you can't disclose any of the specifics that are in	12:33:32
21	the Stroz report.	12:33:34
22	THE WITNESS: Understood.	12:33:39
23	So one, just reiterating, like, there were	12:33:46
24	multiple incidents that led us to this conclusion and	12:33:50
25	assess this belief in this lawsuit.	12:33:54

1 With respect to the Otto acquisition, there's 12:33:57
2 actually more detail later in the complaint. But it's 12:34:00
3 become public knowledge, not involving the Stroz 12:34:05
4 report, that at the time the board was asked to 12:34:09
5 approve this, that -- that Travis and other members of 12:34:13
6 the management team had knowledge that there were five 12:34:16
7 disks that were in Anthony's possession, and that he 12:34:23
8 said there was Google information on those disks. So 12:34:25
9 that's now in the public record. 12:34:29

10 When you look at the -- we've already been 12:34:32
11 through it. But you look at the deal, and the fact 12:34:35
12 that so much of it weighed on him and the fact that 12:34:39
13 there were large indemnity provisions put aside 12:34:45
14 specifically for him, I don't know of a way you could 12:34:50
15 possibly present that to a board and say that this was 12:34:53
16 clean diligence and -- and that be okay. Like, I -- I 12:35:02
17 can't fathom that. 12:35:05

18 BY MR. VERHOEVEN:

19 Q. When you referred to "him," you're referring 12:35:08
20 to Mr. Levandowski, right, in that answer? 12:35:10

21 MR. BRILLE: Object to form. 12:35:13

22 THE WITNESS: It's in the public record that -- 12:35:15
23 that the Uber executives were aware -- I'll -- I'll 12:35:17
24 try not to use pronouns -- were aware that Anthony 12:35:21
25 Levandowski had the five disks. 12:35:24

1 When -- when I was talking about -- you know, 12:35:26
2 this is the largest recipient of the proceeds from the 12:35:32
3 acquisition and the leader of the group and the one 12:35:38
4 that stands to benefit the most from the 12:35:40
5 indemnification. So calling the diligence clean, when 12:35:45
6 you have this fact, is a -- is misrepresentation, you 12:35:53
7 know, from my point of view. 12:35:57
8 BY MR. VERHOEVEN: 12:35:57
9 Q. Okay. Thank you. 12:35:58
10 And why do you think Mr. Kalanick knowingly 12:36:16
11 concealed those issues? 12:36:18
12 MR. FLUMENBAUM: Objection to form. 12:36:22
13 MR. BRILLE: Objection to form. 12:36:24
14 BY MR. VERHOEVEN: 12:36:24
15 Q. Well, let me read the complaint. Paragraph 12:36:25
16 6:
17 "Kalanick, therefore, knowingly concealed 12:36:30
18 these matters from Benchmark and Uber's board." 12:36:34
19 And then it goes on. Do you see that? 12:36:34
20 A. I do. 12:36:35
21 Q. Why do you think he did? 12:36:36
22 A. I'd be speculating as to his intent. I don't 12:36:40
23 know. 12:36:40
24 Q. Well, it says here: 12:36:40
25 "For his personal benefit, the unilateral 12:36:47

1 right to pack the board with three additional 12:36:50
2 directors of his choosing."

3 You stand by that statement; right? 12:36:52

4 A. I do. 12:36:53

5 Q. Any other reasons? 12:36:55

6 A. I -- I -- I'd be guessing that -- what his 12:37:02
7 intentions were. 12:37:03

8 Q. Did you ever talk to Mr. Kalanick about why 12:37:05
9 he concealed the facts underlying the Otto 12:37:08
10 transaction? 12:37:09

11 A. I have not. 12:37:10

12 Q. What about with other executive management at 12:37:14
13 Uber? 12:37:30

14 A. Well, not outside of conversations that were 12:37:34
15 privileged with the -- with the legal team. 12:37:36

16 Q. I direct your attention to paragraph 33. 12:38:05
17 It's on page 15 of Exhibit 918. 12:38:08

18 MR. FLUMENBAUM: I'm sorry. Hold on. 12:38:10

19 Thank you. 12:38:11

20 BY MR. VERHOEVEN: 12:38:11

21 Q. Are you ready for questions? 12:38:27

22 A. Yes. 12:38:27

23 Q. Is this the place where you testified earlier 12:38:30
24 the deal -- the details of the Otto transaction were 12:38:35
25 set forth in more detail, this section entitled -- 12:38:44

1 A. Yes, this section. That's fair. Correct. 12:38:46

2 Q. You've referenced there's a -- I'm sorry. 12:39:07

3 The complaint references: 12:39:12

4 "Kalanick praised Levandowski as one of the 12:39:15

5 world's leading autonomous engineers and an 12:39:20

6 entrepreneur with a real sense of urgency. 12:39:24

7 "Kalanick further described Levandowski as 12:39:26

8 his brother from another mother." 12:39:30

9 The allegation is -- and your belief is -- 12:39:34

10 that he was saying all that, but withholding the 12:39:37

11 information he had from the Stroz investigation; 12:39:41

12 right? 12:39:41

13 MR. BRILLE: Object to form. 12:39:44

14 MR. FLUMENBAUM: Object to form. You can try to 12:39:46

15 answer that. 12:39:49

16 THE WITNESS: These are -- these are taken from -- 12:39:50

17 from -- as you can see, from public statements that he 12:39:53

18 made. 12:39:54

19 His praise for Anthony in these public venues 12:39:59

20 is consistent with what he presented at the board 12:40:03

21 level, and so there's no inconsistency here. 12:40:06

22 I -- and as you -- as you assert, he did not 12:40:12

23 disclose these other details, you know. And I -- and 12:40:17

24 I had mentioned, and they're later in here in the 12:40:20

25 complaint, that some of that is now public with regard 12:40:23

1 to the five-disk matter. 12:40:26

2 BY MR. VERHOEVEN: 12:40:26

3 Q. The last sentence of this paragraph says: 12:40:29

4 "In discussing the Otto transaction in 2016, 12:40:32

5 Kalanick repeatedly emphasized to Gurley and other 12:40:36

6 board members that Uber's acquisition of Otto, 12:40:39

7 employment of Anthony Levandowski, would be 12:40:41

8 transformative for Uber's business." 12:40:44

9 Do you see that? 12:40:45

10 A. I do. 12:40:46

11 Q. What is that referring to? 12:40:48

12 A. Once again, consistent with what we discussed 12:40:53

13 earlier, there was a -- a big part of the argument for 12:40:57

14 why we needed to do this transaction was to employ 12:41:01

15 Anthony Levandowski, who -- who Mr. Kalanick believed 12:41:04

16 was one of the leading experts on autonomous vehicles 12:41:07

17 in -- in the -- in the world. 12:41:10

18 Q. Was employing Anthony Levandowski worth 12:41:14

19 \$680 million? 12:41:17

20 MR. BRILLE: Object to form. 12:41:17

21 MR. FLUMENBAUM: Object to form. We've sort of 12:41:19

22 been over this. 12:41:20

23 You can answer it again. 12:41:22

24 THE WITNESS: Yeah, I don't -- I don't mind going 12:41:24

25 over it again. 12:41:25

1 That -- that discussion did take place at a 12:41:27
2 board meeting, as we had discussed. 12:41:28
3 The argument was to why that headline figure 12:41:32
4 was not un- -- was not unreasonable related to the 12:41:37
5 notion of the milestones that we've previously 12:41:41
6 discussed. 12:41:42
7 BY MR. VERHOEVEN: 12:41:42
8 Q. I direct your attention to paragraph 67. 12:42:14
9 A. Oh, wow. 12:42:15
10 Q. Page 30. All right. Take a second and read 12:42:31
11 it and tell me when you're ready to answer questions. 12:42:32
12 MR. FLUMENBAUM: Paragraph 67? 12:42:36
13 MR. VERHOEVEN: Paragraph 67. 12:42:38
14 (Witness reviews document.) 12:42:49
15 THE WITNESS: Okay. 12:42:50
16 BY MR. VERHOEVEN: 12:42:50
17 Q. And this -- this references: 12:42:51
18 "Kalanick's fraudulent statements and 12:42:54
19 omissions breached his fiduciary duties, including," 12:42:57
20 and then it gets more specific. 12:42:59
21 Do you see that? 12:43:00
22 A. Um-hum. 12:43:01
23 Q. Which of Mr. Kalanick's statements related to 12:43:08
24 the Otto transaction breached his fiduciary duties? 12:43:13
25 A. It would seem obvious that this statement 12:43:22

1 that was made to the board that the diligence, which, 12:43:26
2 as we already ascertained, was remarkably critical to 12:43:33
3 the transaction, in light of the presence of the 12:43:34
4 indemnity and all those things, was clean, left me -- 12:43:37
5 and I can't speak for the other board members -- with 12:43:40
6 an impression that is remarkably different from that 12:43:44
7 that I hold today. 12:43:46
8 Q. And I take it it's your belief that his 12:43:55
9 omission of that critical information during his 12:44:00
10 presentation also constituted fraud and a breach of 12:44:09
11 his fiduciary duties? 12:44:11
12 MR. BRILLE: Object to form. 12:44:12
13 THE WITNESS: That is correct. Once again, this 12:44:14
14 statement refers to other issues also. But with 12:44:20
15 regard to that specific issue, you are correct. 12:44:24
16 BY MR. VERHOEVEN: 12:44:24
17 Q. Does anything else come to mind, still on 12:44:47
18 paragraph 67 -- understanding it's a general 12:44:52
19 statement, but focusing specifically on the Otto 12:44:55
20 acquisition portion of it. 12:44:57
21 A. Um-hum. 12:44:59
22 Q. Does anything else come to mind, in addition 12:45:02
23 to what you've already testified to, that was either a 12:45:09
24 statement or omission by Mr. Kalanick that breached 12:45:13
25 his fiduciary duties or constituted fraud? 12:45:17

1 A. Related to that particular transaction? 12:45:25

2 Q. Right. Or related to Otto, related to 12:45:28

3 Mr. Levandowski. 12:45:29

4 A. Yeah. Yeah. 12:45:31

5 No, not that we haven't previously discussed. 12:45:34

6 MR. VERHOEVEN: Perhaps we should take a short 12:46:02

7 break, and I'll just review -- I may have another five 12:46:06

8 minutes of questions -- 12:46:07

9 MR. FLUMENBAUM: Okay. Great. 12:46:08

10 MR. VERHOEVEN: -- but I'm coming up to the end. 12:46:10

11 MR. FLUMENBAUM: Great. 12:46:12

12 THE VIDEOGRAPHER: Off the record at 12:46 p.m. 12:46:14

13 (Recess taken.) 12:46:15

14 THE VIDEOGRAPHER: Back on the record at 12:54 12:54:08

15 p.m. 12:54:08

16 BY MR. VERHOEVEN: 12:54:08

17 Q. I direct your attention to paragraph 37 of 12:54:17

18 Exhibit 918, the Benchmark complaint. 12:54:22

19 A. Um-hum. 12:54:23

20 Q. And read 37 to yourself and tell me when 12:54:27

21 you're ready to answer questions. 12:54:29

22 (Witness reviews document.) 12:54:48

23 A. Okay. 12:54:49

24 Q. So earlier -- well, I direct your attention 12:54:52

25 to the phrase "interim findings." 12:54:54

1 Do you see it's sprinkled through the 12:54:57
2 paragraph there? 12:54:58
3 A. Yes. 12:54:58
4 Q. When we testified earlier about this -- I 12:55:02
5 don't want to go over it again -- I think you just 12:55:05
6 said -- you and I just said "the Stroz report." 12:55:09
7 But were you referencing, specifically in 12:55:11
8 this time period, the interim findings of the Stroz 12:55:14
9 investigation? 12:55:16
10 MR. FLUMENBAUM: Objection as to form. 12:55:19
11 BY MR. VERHOEVEN: 12:55:19
12 Q. When you testified about if something had 12:55:22
13 been disclosed, if the Stroz report had been 12:55:25
14 disclosed, more accurately what you meant is if the 12:55:28
15 interim findings of the Stroz report -- of the Stroz 12:55:30
16 investigation had been disclosed; is that right? 12:55:33
17 A. This particular complaint was based on all 12:55:44
18 that information that was in the public record. 12:55:46
19 There are documents related to this lawsuit 12:55:50
20 that highlight that, as of this date, there were these 12:55:54
21 interim findings available. 12:55:55
22 Q. Right.
23 A. And we're merely highlighting that those were 12:55:59
24 never disclosed to the board. 12:56:01
25 Q. Okay. I direct your attention to paragraph 12:56:12

1 77 of the complaint, Exhibit 918. 12:56:16

2 There's a sentence in here that says: 12:56:33

3 "At the time, Benchmark could not have known 12:56:38

4 of the matters Kalanick intentionally concealed, many 12:56:42

5 of which were within Kalanick's exclusive knowledge or 12:56:46

6 only known to Kalanick and an 'inner circle' of Uber 12:56:53

7 executives loyal to him (many of whom have since been 12:56:57

8 terminated or forced to resign due to the misconduct 12:57:01

9 described above)." 12:57:06

10 Do you see that sentence? 12:57:08

11 A. Um-hum. 12:57:10

12 Q. Who was in Kalanick's inner circle, as 12:57:13

13 referenced in this paragraph, to the extent you have 12:57:19

14 knowledge? 12:57:19

15 A. Sure. The -- once again, I would reiterate 12:57:24

16 that this complaint and this paragraph reference many 12:57:29

17 issues, not just those related to -- to the Otto 12:57:33

18 acquisition. And so that phrase may or may not have 12:57:38

19 applicability to what we're discussing today. 12:57:41

20 You know, when you look at the parenthetical 12:57:44

21 phrase about -- 12:57:49

22 Q. I'm just asking about who the -- who the 12:57:51

23 inner circle is. 12:57:53

24 A. I -- I was getting to that. 12:57:55

25 Q. Okay.

1	A. So when you look at the phrase about	12:57:59
2	termination or forced to resign --	12:58:02
3	THE WITNESS: Is this part confidential also?	12:58:04
4	Because I -- I . . .	12:58:07
5	MR. FLUMENBAUM: I think the resignations are all	12:58:10
6	public, aren't they?	12:58:11
7	MR. BRILLE: The fact of a resignation is	12:58:14
8	probably -- is not privileged, the fact of a	12:58:18
9	resignation. To the extent that you --	12:58:22
10	THE WITNESS: I just don't want to get to -- you	12:58:25
11	know.	12:58:25
12	BY MR. VERHOEVEN:	12:58:25
13	Q. Okay. I'm not asking you about the	12:58:36
14	parenthetical. I'm just asking the words "inner	12:58:39
15	circle."	12:58:40
16	A. Yeah, I know. It informs it though.	12:58:43
17	Well, let me just state this.	12:58:50
18	With regard to the specific Otto acquisition,	12:58:55
19	you know, as noted in 38, there were -- I think it's	12:59:02
20	38. Yeah. There were -- you know, you have two other	12:59:06
21	parties there that were aware of this fact about the	12:59:09
22	five disks that weren't -- that wasn't disclosed to	12:59:15
23	the board, so there's -- there's two names right	12:59:18
24	there.	12:59:18
25	Q. What are the two names, for the record?	12:59:18

1 A. Nina Qi and Cameron. 12:59:24

2 Q. So with respect to the Waymo dispute or 12:59:29

3 the -- withdrawn. 12:59:30

4 With respect to the Otto acquisition, this 12:59:35

5 phrase you interpret to reference those two 12:59:37

6 individuals? 12:59:38

7 A. Yes. 12:59:38

8 Q. Has either of those two individuals been 12:59:47

9 terminated, to your knowledge? 12:59:49

10 A. No. 12:59:49

11 Q. All right.

12 MR. FLUMENBAUM: Can I have a -- all right. 13:00:05

13 Forget it. Go ahead. 13:00:07

14 MR. VERHOEVEN: So what did you want to talk to 13:00:10

15 him about? 13:00:10

16 MR. FLUMENBAUM: No, just go ahead. 13:00:13

17 MR. VERHOEVEN: Okay. 13:00:13

18 BY MR. VERHOEVEN:

19 Q. There came a time in which you resigned from 13:00:16

20 the board of Uber? 13:00:17

21 A. Correct. 13:00:17

22 Q. When was that, roughly? 13:00:19

23 A. I think it was a couple of days after Travis 13:00:27

24 signed the resignation letter we've already looked at. 13:00:32

25 Q. Why did you resign? 13:00:45

1 A. The members of -- of our partnership and I 13:00:49
2 had a lengthy discussion about trying to -- whether or 13:00:56
3 not it made sense to swap out the board member that 13:01:00
4 represented Benchmark with Uber, in an effort to try 13:01:04
5 and move things forward in a positive direction. 13:01:08

6 The -- the conversations and back and forth 13:01:13
7 and events that led to the meeting in Chicago, I think 13:01:16
8 it's safe to say, had a strain on the relationship 13:01:21
9 between myself and -- and Mr. Kalanick. And it was 13:01:29
10 merely a decision from our firm to try and put a new 13:01:35
11 foot forward to try and create kind of a new day and 13:01:39
12 new relationship with the board. 13:01:41

13 Q. Did you have any discussions with anyone at 13:01:45
14 Uber about your resignation before you resigned? 13:01:48

15 A. I did not. 13:01:49

16 Q. What about with other board members? 13:01:51

17 A. I did not. 13:01:53

18 Q. Have you had any conversations with anybody 13:02:01
19 at Uber since you've resigned from the board? 13:02:04

20 A. Yeah. There were -- there were numerous 13:02:04
21 conversations, as part of the handoff process I was 13:02:13
22 involved in, all of those committees. I wanted to 13:02:16
23 make sure that -- that my partner got the benefit of 13:02:19
24 the -- you know, the transfer of information, that 13:02:23
25 kind of thing. We had a lot of meetings to make sure 13:02:26

1 that that was so . . . 13:02:27

2 Q. Did your partner assume all the positions 13:02:29

3 that you had? 13:02:31

4 A. Yes, with the exception that I believe that 13:02:34

5 some of the special committees have been rolled into 13:02:37

6 one, called a special matters committee. 13:02:41

7 Q. Okay. Can you elucidate on that? Which -- 13:02:43

8 which ones were combined into that committee? 13:02:46

9 A. I think the one that was looking into the 13:02:48

10 Holder issues, the one -- there was -- actually, I had 13:02:54

11 left one out from earlier, because I believe there was 13:03:00

12 a special committee tied to -- to the Vitas Greyball 13:03:05

13 investigation. And the Waymo lawsuit evolved, then 13:03:08

14 rolled into a single committee now. That happened 13:03:12

15 after I left. 13:03:13

16 Q. Who's on that committee? 13:03:15

17 A. I believe Matt Cohler, David Trujillo, and 13:03:19

18 Arianna Huffington. 13:03:21

19 Q. And as far as you know, that committee is -- 13:03:34

20 is still extant, still exists? 13:03:38

21 A. As far as I know, that's correct. 13:03:40

22 Q. Okay. Did you have any conversations with 13:03:43

23 Arianna Huffington about the Uber acquisition of Otto? 13:04:01

24 A. I don't recall any conversations with Arianna 13:04:06

25 specifically about the acquisition, no. 13:04:08

1 Q. Did Ms. Huffington participate and contribute 13:04:13
2 to these board meetings we went through on this 13:04:16
3 subject? 13:04:17

4 A. I don't recall any specific commentary 13:04:21
5 related to the board meeting -- that she made related 13:04:24
6 to the board meeting around the Otto acquisition. 13:04:29

7 The purpose of many of these special 13:04:32
8 committees is -- is expressly legal in nature. And so 13:04:38
9 there were lots of communications in those meetings 13:04:41
10 that I would assume were privileged. 13:04:44

11 So I have recollection of those conversations 13:04:47
12 but not -- I don't remember her opining directly on 13:04:51
13 the Otto acquisition. 13:04:53

14 Q. Do you believe she did? 13:04:56

15 A. I -- I don't -- I don't recall. 13:04:58

16 Q. Do you recall sending Ms. Huffington a copy 13:05:05
17 of the Stroz report? 13:05:07

18 A. I don't recall doing that. 13:05:11

19 Q. Why would you have done that, if you did? 13:05:16

20 MR. BRILLE: Object to form. 13:05:17

21 BY MR. VERHOEVEN: 13:05:17

22 Q. Okay. I'll represent that you did. 13:05:19

23 A. Okay. If I did, it would likely relate to 13:05:23
24 the fact that we were both on the -- on the special 13:05:25
25 committee to look into the -- to manage the Waymo 13:05:32

1	litigation.	13:05:33
2	Q. Did you have a discussion with her about the	13:05:34
3	report?	13:05:35
4	MR. FLUMENBAUM: You can answer -- you can answer	13:05:38
5	that yes or no, if you recall.	13:05:40
6	THE WITNESS: I -- I -- I just don't recall.	13:05:46
7	BY MR. VERHOEVEN:	13:05:46
8	Q. Do you think you would have?	13:05:49
9	MR. FLUMENBAUM: Objection as to form.	13:05:51
10	THE WITNESS: It's possible.	13:05:52
11	BY MR. VERHOEVEN:	13:05:52
12	Q. I mean, you sent it to her?	13:05:55
13	A. Okay. If I did, then, it's likely that I	13:05:58
14	did.	13:05:58
15	Q. Have a conversation?	13:05:59
16	A. Yeah.	
17	Q. You can't remember the substance of any	13:06:02
18	conversation?	13:06:04
19	MR. FLUMENBAUM: Asked and answered.	13:06:08
20	THE WITNESS: I -- I don't recall any specifics.	13:06:11
21	MR. VERHOEVEN: You're supposed to only object to	13:06:12
22	form.	13:06:13
23	BY MR. VERHOEVEN:	13:06:13
24	Q. What about Mr. Bonderman? Did you send a	13:06:19
25	copy of the report to him?	13:06:21

1 A. I don't recall. 13:06:22

2 Q. Do you remember any conversations you had 13:06:26

3 with Mr. Bonderman about the report or the Otto 13:06:31

4 acquisition? 13:06:32

5 A. There were numerous discussions, as part of 13:06:38

6 the special committee, that may or may not have 13:06:43

7 involved the report, but those would be privileged. 13:06:46

8 Q. Was there lawyers in every meeting of the 13:06:49

9 special committee? 13:06:51

10 A. Yes. 13:06:51

11 Q. Who were they? 13:06:53

12 A. It was Patrick Robbins from Shearman. 13:06:57

13 Q. Anyone else? Any other firms? 13:07:03

14 A. No. No. Not as that -- not while I was a 13:07:06

15 member of the committee. 13:07:07

16 Q. Do you remember any conversations with 13:07:10

17 Mr. Bonderman outside of this -- of the committee 13:07:14

18 concerning the Otto acquisition? 13:07:20

19 A. I don't remember any specific conversations. 13:07:32

20 I would say that it's my opinion that he was also of 13:07:40

21 the belief that Anthony should have been terminated as 13:07:43

22 soon as he pled the Fifth. 13:07:45

23 Q. Is that based on conversations with him 13:07:47

24 generally? 13:07:49

25 A. Yes. 13:07:49

1 Q. And you -- can you recall the specifics of 13:07:51
2 any of those conversations? 13:07:52

3 A. I don't remember any of the specifics. 13:07:55

4 Q. Did he contribute during board meetings on 13:07:57
5 this subject? 13:07:59

6 A. Yes. 13:07:59

7 Q. Can you remember what he said in any of those 13:08:01
8 meetings? 13:08:02

9 A. I -- I don't. I just know that his -- I know 13:08:04
10 that that was his point of view. 13:08:06

11 MR. VERHOEVEN: Thank you very much, Mr. Gurley. 13:08:28
12 I have no further questions at this time. 13:08:31

13 We have, as you've noticed, several privilege 13:08:34
14 instructions which are currently in dispute. And if 13:08:39
15 there's a ruling that certain documents have to be 13:08:43
16 produced, we -- just so you know, we may take the 13:08:47
17 position that you have to come back and answer some 13:08:49
18 questions about that. 13:08:50

19 THE WITNESS: Okay. 13:08:50

20 MR. VERHOEVEN: Thank you very much for your time. 13:08:53

21 THE WITNESS: Thank you.

22 MR. FLUMENBAUM: Anybody else? 13:08:54

23 MR. BRILLE: Not here, no. 13:08:56

24 MR. FLUMENBAUM: Thank you. Thank you all. 13:08:58

25 THE VIDEOGRAPHER: This concludes today's 13:09:01

1 deposition of William Gurley, consisting of three 13:09:04

2 DVDs. 13:09:05

3 We're off the record at 1:09 p.m. 13:09:09

4 (Whereupon, the deposition was adjourned at

5 1:09 p.m.)

6

7

8

9

10

11

12

13

14

15 _____
JOHN WILLIAM GURLEY

16

17

18

19

20

21

22

23

24

25

1 FEDERAL CERTIFICATE OF DEPOSITION OFFICER
2 I, ANRAE WIMBERLEY, CSR NO. 7778, do hereby
declare:

3 That, prior to being examined, the witness named
4 in the foregoing deposition was by me duly sworn
pursuant to Section 30(f)(1) of the Federal Rules of
Civil Procedure and the deposition is a true record of
5 the testimony given by the witness;

6 That said deposition was taken down by me in
shorthand at the time and place therein named and
7 thereafter reduced to text under my direction;

8 --X-- That the witness was requested to
review the transcript and make any changes to the
9 transcript as a result of that review pursuant to
Section 30(e) of the Federal Rules of Civil Procedure;

10 ----- No changes have been provided by the
witness during the period allowed;

11 ----- The changes made by the witness are
12 appended to the transcript;

13 ----- No request was made that the transcript
be reviewed pursuant to Section 30(e) of the Federal
14 Rules of Civil Procedure.

15 I further declare that I have no interest in the
event of the action.

16 I declare under penalty of perjury under the laws
17 of the United States of America that the foregoing is
true and correct.

18 WITNESS my hand this 25th day of August, 2017.
19
20
21

22 
23
24

25 ANRAE WIMBERLEY, CSR NO. 7778